SEWERS AND DRAINS—p. 642. THE MIDDLE TEMPLE SUNDIALS—p. 643.


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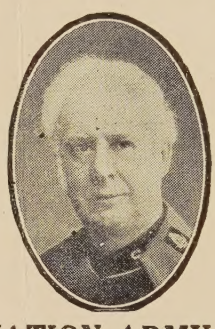

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# The Solicitors' Journal and Weekly Reporter.

(Established 1857.)

*** Notices to Subscribers and Contributors will be found on page v.

VOL. LXXI. Saturday, August 13, 1927. No. 33

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## Current Topics.

### The Style of a Lord Mayor.

The lord mayors of cities other than London or York appear to have a legitimate grievance in respect of the use of the prefix "Right Honourable." Some time ago a prominent official of the College of Heralds was asked to give an official ruling on the point, and laid down that any lord mayor is *ipso facto* entitled to this style. It is now held, reversing this rule, that the right to be styled "Right Honourable" in the case of a lord mayor can only be acquired by express grant from the Crown, which is proved, by prescription or otherwise, in the cases of London and York only. In view of the earlier ruling, however, certain lord mayors have been claiming and using the style, and, having regard to the dignity of their cities, are now naturally loth to relinquish it. No doubt the lawful style of a lord mayor is a question of law, but it is difficult to see how it could be properly tested. The Lord Mayor of Newcastle states that he holds letters addressed to his predecessor in office by the present Home Secretary in the style of "the Right Honourable the Lord Mayor of Newcastle." If the Lord Mayor of Newcastle wrongfully assumes and claims the prefix of "Right Honourable," he disturbs the dignity of those lawfully entitled to it. But disturbance of a dignity is not a matter cognisable by a court of law at all, as held in *Cowley* v. *Cowley*, 1901, A.C. 450, in which the late Earl unsuccessfully claimed an injunction against his first wife, after she had divorced him, and he had married again, from styling herself Countess Cowley. And, since the persons entitled to the prefix "Right Honourable" do not thereby acquire legislative privilege, the Committee of Privileges does not appear to have a *locus standi*. The title of "Lord Mayor" has been conferred in comparatively recent times by letters patent on the mayors of ten cities in England and of Cardiff, but they have no such right as a lord mayor of London has on occasion to attend a Privy Council Meeting.

### Motor Hooting.

We are all becoming concerned as to the effects of noise upon our nervous systems. It hardly needs learned professors to tell us that excessive noise is deleterious. Any man can testify to that who sits in an office trying to do mental work while a gentleman in a car outside, detained by a block in the traffic, proclaims his impatience to the world by strident hoots, or a so-called "sports car" delivers rapid hammer blows of great severity on the ear drums of persons around. The latter, with its active ally, the motor-bicycle, might provide, indeed, another "safety first" catch-phrase: "Noisy exhausts, nervous exhaustion." An evening paper tells us that there have been 6,000 prosecutions for screeching sirens in the metropolitan district in the first six months of this year. It would be interesting to have further particulars. So far as we know there is no provision of law under which such a prosecution could take place, nor have we heard of any attempt to deal with the evil by police action. But it is a hopeful sign when *The Times* devotes nearly two prominent columns to an article by Lord Montagu of Beaulieu on "Road Noises." Whether the institution of the suggested "Zones of Silence" is a practicable one, and whether the total prohibition of the hooter in city streets would lead to the greatly increased mortality he fears, are debatable points. The blare of a hooter sometimes "gallies" (a valuable old word whose revival becomes necessary: it means to confound by noise) a man into running into the very danger he is anxious to avoid, and so defeats its own object; and the absence of sound warnings, besides leaving men more calm and collected, with unrasped nerves, to face the dangers of the street, should sharpen eyesight by making a bright outlook the only reliable insurance against accident, as indeed it is at present. Sound warnings, too, have a fictitious value in the courts, so much so, that when a taxi-driver knocks down anyone, his first protective exclamation, whether he has sounded his siren or not, is, "Didn't yer 'ear my 'ooter?" The victim, amid the thousand shrieks of the street, is sometimes mesmerised into the belief in a non-existent thousand and first.

### Construction of Indemnity Clause.

The Court of Appeal, Lord Justice Sargant dissenting, has confirmed the decision of Mr. Justice MacKinnon in *James Durnford & Sons, Ltd.* v. *Great Western Railway Co.*, reported in 71 Sol. J., 520. The facts are briefly as follows: The plaintiffs were a contracting company whose business involved the transportation by rail of large quantities of

materials. To facilitate these operations they obtained from the defendant railway company permission to use a portable gangway over their lines. Consent was granted subject to the following condition : " (The plaintiffs) agree and undertake to indemnify the said company against all claims and demands or liability whatsoever whether in respect of damage to person or property arising out of or in connexion with the existence or user of the said gangway . . . " As a result of the alleged negligence of the defendant company's servants during shunting operations, the plaintiffs' gangway was struck and destroyed, and a motor lorry on it was damaged. An order was made that before dealing with the plaintiffs' claim for damages on the facts a preliminary point of law turning on the true construction of the condition clause (*supra*) should be tried. The point at issue was whether under the indemnity clause the defendants were also entitled to be indemnified against claims by the plaintiffs themselves, as distinct from claims by third parties only. Mr. Justice MacKinnon was of the opinion that the wording of the clause did not imply the abandonment of any claim by the plaintiffs themselves and decided the preliminary point in their favour. This decision was upheld by the Court of Appeal, where attention was drawn, as it was in the court below, to the inadequacy of the wording of the clause to express accurately the real intention of the parties. The Master of the Rolls hesitated to say exactly what the clause might be construed to mean, but agreed that the words were not apt to defeat a claim by the plaintiffs themselves. The inclusion in the clause of a few more specific words would undoubtedly have removed any existing ambiguity, and placed the parties outside the possibility of litigation. Lord Justice Sargant, in his dissenting judgment, deemed the wording of the clause wide enough to include an indemnity against claims by the plaintiffs where no exception had been made in their case. A dissenting judgment must inevitably produce some feeling of dissatisfaction, and a case of this description particularly emphasises the need of accuracy and clarity when drafting material clauses.

### Award of Damages against Co-respondent whether equivalent to Finding of Adultery.

The question whether an award of damages against a co-respondent, without an express finding that he had committed the adultery alleged, involves inferentially and conclusively that he was guilty of the adultery alleged, was considered by Hill, J., in *Little* v. *Little*, *ante*, p. 493.

In petitions for dissolution, the question whether the respondent has committed adultery with the co-respondent is kept distinct from the question whether the co-respondent has been guilty of adultery with the respondent, since there may be evidence, as, for example, admissions by one of the guilty parties, which would be admissible only against the one, but not against the other ; and it sometimes happens that there may be a finding, for example, that A has committed adultery with B on a specified occasion, coupled with a finding that B has not committed adultery with A on the identical occasion.

Now, in *Little* v. *Little*, which was a wife's undefended petition for dissolution, the husband had been co-respondent in a previous suit, in which the woman, named in the petition in *Little* v. *Little* had been the respondent. On such previous occasion the jury had found that the respondent (the woman) had been guilty of adultery with the co-respondent (Little), and they had awarded £500 damages against him. The question thereupon arose whether the award of damages amounted to a finding of adultery against Little.

A somewhat similar question was considered in *Ruck* v. *Ruck*, 1896, P. 152. There, on a petition by a wife for dissolution, the decree in a previous suit in which her husband had been co-respondent was produced. The decree stated that the jury found that the respondent had been guilty of adultery with the co-respondent, and that he had been condemned in costs, but contained no finding by the jury that the co-respondent had been guilty of adultery with the respondent. It was held that the decree was not sufficient evidence by itself of adultery against the husband. In *Little* v. *Little*, Hill, J., relying on a decision of Sir Francis Jeune, in *Swan* v. *Swan*, *Times*, 24th March, 1903, distinguished *Ruck* v. *Ruck*, on the ground that in that case there was no award of damages, the learned judge being of opinion that where there was an award of damages against the husband who was the co-respondent in the previous suit, there was necessarily involved therein a finding that the co-respondent had been guilty of adultery with the respondent in the previous suit.

There is one criticism, however, that we would venture to make. It will be observed that in *Ruck* v. *Ruck* an order for costs was made against the co-respondent in the previous suit, and that being so it might be argued that a finding of adultery against the co-respondent must necessarily have been involved, in the making of the order for costs, and yet the court held that the decree was inadmissible. It is submitted that the principle of *Little* v. *Little* is the correct one, and that, therefore, *Ruck* v. *Ruck* should be regarded as erroneous.

### Effect of Liquidation on Recovery of Damages.

Last June (see p. 461, *supra*) we discussed the question of a plaintiff's power to recover damages when the unsuccessful defendant in an action for personal injuries became bankrupt. This question was the subject of a summons (*Re Harrington Motor Co., Ltd.*) before Eve, J., recently. The respondent was the liquidator of the Harrington Motor Co. Limited, from whom the applicant had recovered £324 for personal injuries in an action in the King's Bench Division. The applicant asked for a declaration that that sum, which had been paid over by the insurance company, in which the motor company were insured, to the liquidator, together with the costs, did not form part of the assets of the company available for distribution among the creditors in the winding-up, but was payable to him direct. It will be noted that this case differed from the hypothetical case dealt with in our recent issue inasmuch as the judgment in the King's Bench Division was obtained before the liquidation and the applicant was, therefore, a creditor in the liquidation and entitled to share in the assets. The learned judge said that all that *Re Richardson*, 1911, 2 K.B. 705, decided was that a liquidator or trustee who was under an obligation to account to a third party was in no better position than the original party. In the present case it was impossible to make out that the applicant had any claim at law or in equity against the money in the hands of the liquidator. It was said that it was unfair or unrighteous that this money should be applied for the benefit of others, but the difficulty was that the law stated that the assets, unless subject to a legal or equitable lien, were to be distributed among the creditors. He had to assume that the legislature in so directing had regarded as the position that less injustice would be worked by a *pari passu* distribution than by giving particular creditors preference. He thought no special case had been made out for interfering with that distribution. As the learned judge observed, the applicant was deserving of sympathy, but he had, at any rate, the right to share proportionately with the other creditors in whatever assets there were. In the case we discussed, the successful plaintiff did not even have this privilege owing to the fact that the receiving order was made before judgment though after the commencement of the proceedings. *Re Harrington* does, however, serve as another reason for the remedy which we suggested for this state of things—the application of the principle of the Workmen's Compensation Acts, whereby the rights of a bankrupt employer against an insurance company in respect of an injured workman are automatically vested in the workman ; in other words, subrogation of the unsuccessful defendant's rights against his insurers to the plaintiff.

# Some Legal Aspects of Town Planning.

By RANDOLPH A. GLEN, M.A., LL.B.
(*Editor of "Glen's Public Health," 1925 Edition.*)

(*Continued from p.* 628.)

X.

The following are the remaining observations of the Minister of Health upon the Sevenoaks (Rural) Town Planning Scheme:—

As to "*density zoning*," the following observation should be compared with the similar observation on the Sidcup Scheme:(6) "With regard to the proposal of the Council that the area generally should be restricted to a density of eight to the acre, the Minister's view is that a low density cannot as a rule be safely imposed unless there is clear evidence that the land concerned is being or will in the near future be developed for a class of property for which larger plots are required. It would appear that the prospects of systematic development in larger portions of the area are remote and the Minister would hesitate therefore to approve a hard and fast limit of eight to the acre without any latitude to meet unforeseen contingencies. It is suggested, moreover, that should the area develop generally with a type of house for which larger plots are required, this would be likely to entail a closer density over portions of the area for the service of the area generally. It is suggested, therefore, that the Council should have a general power to permit an increase of density up to twelve to the acre, with a right of appeal against refusal of permission, and that any portions of the area which can be selected at once as suitable for closer development at twelve to the acre (e.g., in the immediate neighbourhood of the villages) should be so allocated. In this connexion, it is suggested that the areas allocated for a density of twelve to the acre at Westerham and Edenbridge might reasonably be considerably increased. It is also suggested that the areas hatched purple and any shopping areas which may be selected should be included in the density zone of twelve to the acre."

As to "*shopping areas*," to the observation already noted,(7) the Minister added: "It is suggested, therefore, that the Council should carefully consider whether the present time is not suitable for selecting some areas where shops, business premises and public buildings, as well as dwelling-houses and residential buildings, may be erected without consent."

As to "*height*," the observation was practically the same as that upon the urban scheme.(8)

As to "*open spaces*," the observation here is what I suggested should have been the observation on the urban scheme.(9) It is: "It is understood that these areas, shown on the Map as existing public open spaces, are in fact in private ownership and rented by the parish councils concerned. If it is the intention of the Council that these areas should be reserved under the Scheme as permanent public open spaces they should be coloured on the Map as lands proposed to be reserved for that purpose." And again, with reference to Chipstead Common, One Tree Hill, and Cowden Recreation Ground: "If, as is gathered, these are existing public open spaces, it is suggested that they should be so shown on the Map." With regard to another open space, the observation was: "It would appear desirable, with a view to facilitating development of the road west of the open space, to make provision for an access on the lines shown on the enclosed plan No. 2 and for the diversion of the existing footpath west of the open space. If this were done, it would be necessary to colour the proposed entrance pink on the Map and to include it as a new street in the Preliminary Statement." And with regard to another: "In view of the objection of the owner and the position of this land in relation to Broughton House, it would appear that this proposal might involve a substantial claim for compensation on the making of the scheme, and it is suggested therefore that the Council should consider whether it would not be advisable to omit this proposal and to make provision for an alternative." That difficulty of access is an impediment was pointed out thus: "In view of the objections of the Owner and the difficulty of providing a convenient access to the open space, it is suggested that this proposal should be omitted and that the Council should consider the practicability of providing a suitable alternative in the neighbourhood." As to the use of "frontage land," the observation was: "The Minister deprecates generally the reservation for public open spaces (or public allotments) of frontage land to existing or proposed new roads, and he suggests that this proposal should be amended by the omission of frontage land as shown on the enclosed plan No. 2." A "school" was another stumbling block: "It is understood that the portion of the proposed open space east of the footpath has been developed by the erection of a school and should therefore be omitted from the proposal." And so were "cesspools": "It is understood that this area as shown on Map No. 2 includes land forming part of the gardens at the rear of cottages and land containing the cottage cesspools. It is suggested that the proposed open space should be located further westwards to avoid the inclusion of this land." As to a proposed "private" open space, the Minister said that he "doubts the advisability of reserving this land as a private open space in view of the objections of the owner. He gathers that it is unlikely that the land will be developed for building purposes and that little, if any, advantage would therefore be gained by its reservation. Unless the Council are able to secure an agreement with the owner in regard to the reservation, the Minister is disposed to consider that the proposal would best be omitted." An objection received since the local inquiry was given effect to thus: "The Minister has received an objection to this proposal from the owner since the Inquiry and it is understood that a similar objection has been lodged with the Council. In view of the objection, the Council may wish to consider whether it would not be desirable to omit this proposal and to make alternative provision in the neighbourhood, and the Minister would be glad to be informed of the Council's views in the matter."

As to "*allotments*," one of the observations was: "It would not appear that the strip of land left between the proposed allotments and the railway could conveniently be developed, and it is suggested that the proposed area should be amended either by extending it to the railway or by moving it Northward so as to leave a strip of land along the railway sufficient for a road and two building depths." Another was: "It is suggested that this proposal might with advantage be slightly amended by the exclusion of a strip on the North East side so as to leave a greater depth available for development on the Chipstead-Chevening Road." And another: "In view of the amount of road frontage included in these proposals, the Minister doubts the advisability of reserving the lands as permanent allotments by means of the scheme, and he suggests that the proposals should be omitted." And another: "In view of the proximity of this land to the railway station, the Minister suggests that it would be inadvisable to reserve the land as permanent allotments and that the proposal should therefore be omitted." Provision of "access" was dealt with thus: "It is observed that in a number of cases no access from existing or proposed new roads to proposed open spaces and allotments is provided by existing rights of way. It is suggested that it would be desirable in such cases to make provision for access in the scheme and to colour on the Map the land required for access as part of the proposed public open space or allotments as the case may be."

(6) See *ante*, p. 441, col. i, middle.
(7) See *ante*, p. 440, col. ii, bottom.
(8) See *ante*, p. 554, col. i, top.
(9) See *ante*, p. 554 col. i, middle.

As to "*railway lands*," the observation made on the urban scheme was repeated here.(10)

The only remaining "legal aspects" that occur to me are the appeals to the Minister of Health under the Town Planning (General Interim Development) Order, 1922, and these will be dealt with in the articles to follow.

(10) See *ante*, p. 479, col. ii, middle.

(*To be continued.*)

# Sewers and Drains.

By ALEXANDER MACMORRAN, M.A., K.C.

## I.

The distinction between sewers and drains has been the subject of much litigation, and it is important from the point of view of property owners on the one hand and local authorities on the other. The importance to the landowner consists mainly in this: that a drain has to be maintained and kept at the cost of the landowner, while a sewer has to be maintained and repaired by the local authority. The landowner may seek to escape liability on the ground that the channel or conduit is a sewer vested in the local authority which they are liable to maintain; but on the other hand it may be in the interest of the landowner to avoid that consequence, for a sewer under his land may be a serious encumbrance to his property: see *Pemsel* v. *Turner*, 1907, 2 Ch. 191.

The Public Health Act, 1875, s. 4, contains definitions which have to be carefully considered. It provides that the expression "drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptable for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed. The expression "sewer" includes sewers and drains of every description except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act. These definitions have, to some extent, been varied by later legislation, which will be noticed hereafter. But speaking generally, it will be seen that a drain is something used for the drainage of one building while a sewer receives the drainage of two or more buildings.

The question whether a structure is one building or two finds some illustration in cases decided under the Lands Clauses Act, 1845, s. 92. In one case it was held that where a man used two houses with internal communication as one house for the purpose of one business, holding them under separate leases of even date from the same lessor, the two houses constituted one entire house so that if a company took the premises comprised in one lease they were bound to take those comprised in the other (*Siegenberg* v. *Metropolitan District Railway*, 49 L.T. 554). This case may be compared with another, where the tenant was the lessee of two semi-detached villas under one continuous roof. The party wall between them was only carried up to the ceilings of the bedrooms so that the space between those ceilings and the roof formed one continuous space through which a person might creep from one end of the roof to the other, but with this exception, there was no internal communication between the two villas. It was held that the two villas did not constitute one house within the meaning of the section already mentioned (*Harvie* v. *South Devon Rly. Co.*, 32 L.T. 1). Passing to later cases, reference may be made to *Hedley* v. *Webb*, 1901, 2 Ch. 126. It was there held that in the circumstances of that case a pair of semi-detached houses constituted one building only within the meaning of the definition already set out, and that the culvert from the point of junction of the drainage of the two houses was a drain and not a sewer within the meaning of that section In the course of his judgment, Cozens-Hardy, J., said: "Apart from authority, I should have thought that, as regards the drainage of one building only, it was a question of fact to be considered in each case, 'Aye or No, is this one building?' And it may be one building, though occupied by a great number of people, whether in flats or not. The words used are not 'one house only' but 'one building only.' I think the authorities substantially bear out this view. Indeed, the view that two semi-detached houses may be—I do not say must be—one building only is borne out by what was said by the Divisional Court and by the Court of Appeal in *Kershaw* v. *Taylor*, 1895, 2 Q.B. 208, 471." The effect of this decision was considered in *Humphery* v. *Young*, 1903, 1 K.B. 44, where the court held that no general rule could be laid down as to whether a pair of semi-detached houses constitute one building only within the meaning of the definition, even though they be under one continuous roof. It is in each case a question of fact. In the course of his judgment, Lord Alverstone, C.J., said: "Here the two houses are stated to have gardens in. front and behind separated by fences, and to have been always occupied by separate tenants. Upon that evidence the justices found as a fact that the two houses were separate buildings not within the same curtilage. It is impossible to say that there was not evidence upon which they could so find." The meaning of the expression "premises within the same curtilage" has been discussed in several cases. In one, the court held that the shops in the Lowther-arcade were not one building nor premises within the same curtilage (*St. Martins-in-the-Fields, Vestry of* v. *Bird*, 1895, 1 Q.B. 428). On the other hand, where there were two lots of buildings separated by a causeway twenty feet wide drained by means of twelve branch drains running from each set of apartments into a main drain under the causeway which communicated with the sewer it was held that the two blocks of buildings were premises within the same curtilage (*Pilbrow* v. *Shoreditch Vestry*, 1895, 1 Q.B. 33, 433). The *Lowther-arcade Case* was followed in *Harris* v. *Scurfield*, 68 J.P. 516, where Lord Alverstone, C.J., said: "There is no definition of a curtilage which would include the case of a number of houses separately occupied by different people simply because there is a common access and, to some extent, common accommodation." In *The Shoreditch Case*, Lord Esher said that the word "curtilage" was to be construed not upon conveyancing law but on considerations relating to the mode of building, the object with which buildings had been erected, and the manner in which they had been used.

The next observation to be made on the definition of the word "drain" is that it must be made for the purpose of communicating from the building with a cesspool or other like receptacle for drainage or with a sewer. It is to be observed that the definition makes no provision for the drainage of a house directly into the sea or into a river, canal or lake, but there has been no express decision dealing with such cases.

For purposes of the definition of a sewer it is quite immaterial by whom it was originally constructed or whether it is entirely in private land. The test is simply whether the channel (to use a neutral expression) drains one building or more. The law is clearly stated in *Travis* v. *Uttley*, 1894, 1 Q.B. 233. In that case there was a drain running under three houses. The drain in question passed through the basements and received the drainage first of one and then of the other two houses which it conveyed into a sewer. It was held that the common drain was a sewer within the meaning of the definition. In the course of his judgment Wills, J., said: "This drain is used for the drainage of more than one building. It is therefore a sewer. It is impossible to say that the part which is used for the drainage of one building is a drain and the rest a sewer. The drain is a sewer from end

to end." In a subsequent case the same learned judge withdrew the opinion he had expressed that the drain was a sewer from end to end.

In *Beckenham U.D.C.* v. *Wood*, 60 J.P. 490, it was held that although a pipe receiving the drainage of more than one building, not being premises within the same curtilage, is a sewer from and below the point where it receives the drainage of more than one building, it is a drain and not a sewer above that point. CAVE, J., said: "The general rule as I understand is that where a drain receives the sewage of two or more houses it is a sewer. Where it receives the sewage of one house only it may still remain a drain, though not necessarily, because it may be a sewer whether it takes the drainage of one house only or no houses at all. A main sewer may be laid down by a local authority in a new street where no houses are built, but where it is intended that houses shall be built, and subsequently the building may be commenced at the lower end of the street, and where the drains of one house are connected with the main sewer the connecting pipes will be drains and not sewers, but the sewer itself will no less continue to be a sewer although it receives only the drainage of that one house, and consequently a sewer without a drain at all will be a sewer."

This decision was followed by NEVILLE, J., in *Turner* v. *Handsworth U.C.*, 1909, 1 Ch. 381. In that case a landowner had given notice of his intention to lay out a new street and to construct therein a line of pipes as a sewer. It was held that such line of pipes, though unused, immediately became a sewer within the meaning of the definition.

(*To be continued.*)

## The Middle Temple Sundials.

WITH the advent of the Long Vacation, the Temple assumes a quietude and serenity even more marked than in term time, although even then the visitor who turns into it from the thronging Strand or busy Fleet-street receives a pleasing shock of surprise. With its cloistral courts, its venerable church within which repose the effigies of the Knights Templars, its Elizabethan hall under whose noble hammer-beam roof has assembled many a goodly company of those whose names are writ large in law and letters, its fountain, whose silvery jet CHARLES LAMB, when a boy, turned on, to the amazement of his juvenile companions, who regarded the result as the product of magic—with attractions such as these, with rich memories of the past, and with the ghosts of JOHNSON, GOLDSMITH, BURKE, LAMB and—nearer our own day—DICKENS and THACKERAY, haunting the precincts which they knew and loved so well in life, the Temple is one of the enchanted spots of the metropolis, tranquil and soothing. In keeping with the air of repose brooding over it are the various silent recorders of the flight of time—the sundials—which adorn the buildings, and which are apt to pass unnoticed by the casual visitor. As may well be imagined, the sundials made a potent appeal to the poetic fancy of LAMB, to whom, as having been born in the Temple and spent many of his riper years there, its very stones were dear. In his "Old Benchers of the Inner Temple" he wrote of them with fond affection. "What an antique air," he declared, "had the now almost effaced sundials, with their moral inscriptions, seeming coevals with that Time which they measured, and to take their revelations of its flight immediately from heaven, holding correspondence with the fountain of light," and he proceeded to contrast "the simple altar-like structure and heart language of the old dial" with the prosaic clock and "its ponderous embowelments of lead and brass, its pert or solemn dulness of communication." The various dials affixed to Middle Temple buildings were originally placed *in situ* towards the end of the seventeenth century, although the dates on several of them might lead the visitor to conclude that their origin was much more recent. This is explained by the practice which, till lately, was almost invariably followed of affixing the date, with the initials of the Treasurer in office during the year, when the dial was repainted and re-gilt. In 1921, however, when the dial in Pump-court was repainted, the Treasurer for that year, the late Mr. C. C. SCOTT, K.C., with a self-effacing modesty characteristic of the man and worthy of all commendation, departed from the old tradition and gave directions that the date when the dial was first placed in position, namely, 1686, and the initials of the Treasurer for that year should be placed upon it. It continues, however, to bear the familiar inscription "Shadows we are, and like shadows depart." Its neighbour in Essex-court bears the motto "*Vestigia nulla retrorsum*," while that in Brick-court has the words "Time and Tide tarry for no man," an inscription upon which GOLDSMITH must often have looked from his chambers hard by. A legend has it that at one time this dial bore the odd words: "Begone about your business," the explanation being that the then Treasurer, when asked what motto was to be placed under the gnomon, testily replied to the messenger in the words just quoted, which were accepted by the dial maker as those he was to inscribe! Facing Middle Temple Hall is another dial with the motto "*Discite justitiam moniti*," while that affixed to a building in Elm-court, facing Middle Temple-lane, draws upon MARTIAL for its motto: "*Pereunt et imputantur*." The Benchers of all the Inns of Court are occasionally accused of lending countenance to what many deem acts of vandalism in connexion with the buildings under their charge, but all who love the quietude of the Temple and its collegiate aspect must be grateful that those grave and reverend seigneurs have with such pious solicitude preserved the sundials, those interesting associations with the past and their call to remember the fungacity of time.

## A Conveyancer's Diary.

**Tacking under L.P.A., 1925, s. 94.**

In view of the questions raised by Mr. Conway Morris in his article in 64 L.J., pp. 20-22, it may be useful to state what we conceive to be the objects and operation of L.P.A., 1925, s. 94. Rights to tack future or further advances are obviously required, for instance, by bankers for the purposes of current accounts, loan accounts (see the words "or other further advances" at the end of sub-s. (2), which we apprehend will not by any means necessarily be construed as *sui generis* with "current account") and other financial arrangements, frequently contemplated in bankers' securities. Other instances are builders requiring advances as and when different stages of a building are completed, and persons liable to pay death duties by instalments.

Accordingly, sub-ss. (1) and (2) seek to confer such rights. Subject to these sub-sections the right to tack is abolished by sub-s. (3), no doubt (among other reasons) because of the "great severity" arising from the old doctrine.

Let us consider the alternative cases, paras. (*a*), (*b*) and (*c*) of sub-s. (1), where tacking is authorised.

Paragraph (*a*) merely preserves the rights of the parties interested to make their own arrangements. Mr. Morris is no doubt right in saying that these should be effected at any rate in writing, if not by deed, in accordance with the old practice.

Paragraph (*b*) authorises the further advance to be tacked where the mortgagee has no notice of the subsequent incumbrance. This applies (see the last sentence of sub-s. (1)) whether or not his mortgage was made for securing further advances. Thus if X mortgages to A, and then to B, who does not register his mortgage; A, having obtained a certificate of search can safely make another advance to X, on the security of a further charge and tack it to his mortgage, though not made for securing further advances.

Under sub-s. (2), as amended, if A's mortgage had been made for securing a current account or other further advances, it would not have been necessary for A, having no notice of B's mortgage, to have searched before making the further advance; see also the proviso to sub-s. (3).

If, independently of registration, B gives notice of his mortgage to A, then, unless para. (*c*) applies, A will thereafter be unable to tack any further advances to his mortgage to the prejudice of B.

Paragraph (*c*), in the supposed case, authorises A, where in his mortgage he has covenanted to make a further advance, to comply with his covenant and tack the further advance, though B has expressly given notice to A of his charge.

This paragraph, as is rightly stated, overrules *West* v. *Williams*, 1899, 1 Ch. 132; but, with all respect to Mr. Morris, that does not prevent X from borrowing from a stranger, B, if X can do so cheaper than from A.

Thus X can either arrange with B to take a transfer of A's mortgage and reduce the rate of interest, or, if this course is not feasible, X can release A from his obligation, whether general or limited, give notice of the release to A, and then borrow from B. In that case A would no longer be protected by para. (*c*), for the obligation would have ceased.

It would not be usual or proper for X to covenant not to borrow from any other person than A.

If the mortgage imposes an obligation on A to make a further advance, that mortgage would usually be made expressly for securing the further advances. But if, instead, it contemplated that a further charge should be given in respect of each further advance, still A would be protected when complying with his obligation, for sub-s. (1) applies (see the last sentence) whether or not A's mortgage was made for securing further advances. Nor will A have to search, for para. (*c*) applies, whether or not he has notice of B's mortgage.

*Ex p. Hooper*, 1815, 1 Mer. 7, is, no doubt, referred to as showing that something more is required than a parol agreement to convert a legal mortgage into a mortgage for securing a further advance, but what has that to do with the construction of the section?

We submit, with deference to Mr. Morris, that the construction of the section is not difficult; indeed, we go so far as to predict that it ought to work smoothly. Perhaps, after our attempted explanation, he will kindly point out in what respect the section is not "well drafted."

## Landlord and Tenant Notebook.

(*Continued from page* 629.)

**Obtaining an Order for Possession by Concealment of Material Facts.**

The next point that arises for consideration is as to the meaning of the expression "concealment" and "misrepresentation" of material facts, which appear in sub-s. (6) of s. 5 "4" of the Rent Restrictions Act, 1923. With regard to the expression "concealment," it is submitted that the expression itself connotes something done intentionally, and therefore, fraudulently. It is difficult indeed to imagine how there can be an *innocent* concealment of material facts. If then, by "concealment" is made *intentional and fraudulent* concealment, what meaning is to be ascribed to "misrepresentation."

There can be no question that misrepresentation may be either "innocent" or "fraudulent," in which latter event, the misrepresentation would amount to "deceit," and the law reports are full of cases in which this distinction is clearly recognised in the sphere both of contract and of tort. The question therefore arises whether by misrepresentation as used in sub-s. (6) of s. 5 "4" of the Rent Restrictions Act, 1923, is meant innocent misrepresentation or fraudulent misrepresentation, or both. The learned county court judge in *Wovenden* v. *Matthewman* was of opinion that both innocent as well as fraudulent misrepresentation were covered by sub-s. (6), and the learned judge arrived at this conclusion, on the interpretation which he placed on the object of the sub-section, which he expressed to be for the protection of the tenant from any injury which might be caused to him by the court being misled.

With great respect to the opinion of the learned county court judge, we cannot agree with this view of the meaning of the expression "misrepresentation" as used in sub-s. (6).

In the first place, it is hardly likely that Parliament should have legislated in any such manner. Courts are occasionally misled, and the proper remedy of the aggrieved litigant in such a case is to appeal, and if the tenant is in need of protection it can scarcely be said that it is the court itself against whom he is to be protected. Clearly, the object of sub-s. (6) is to protect the tenant against the landlord and the landlord alone.

It is submitted that misrepresentation in sub-s. (6) is to be construed as wilful or fraudulent misrepresentation, and for this reason, viz.: (*a*) because of the juxtaposition of "misrepresentation" with "concealment," which latter expression, as indicated above, can only refer to something done intentionally; and (*b*) because sub-s. (6) is in the nature of a penal or quasi-penal provision, which must be construed, therefore, strictly.

For these reasons, with respect, we cannot agree with the decision of the learned county court judge in *Wovenden* v. *Matthewson* that the landlord was liable to pay the tenant compensation under s. 4 "5" (6) of the Rent Restrictions Act, 1923.

Before concluding, however, there appear to be a few more relevant observations which may be made regarding the above sub-section.

**Vacating of Possession without Order for Possession.**

In the first place, does this sub-section apply when the landlord has intimated to the tenant that he requires the premises for his own personal occupation, and the tenant, in consequence, vacates without any order being made by a court? In such a case, assuming that the landlord made fraudulent misrepresentations to the tenant, or concealed material facts from him, does sub-s. (6) apply?

It is submitted not, and that before sub-s. (6) can apply at all, *there must have been an order for possession made by the court*. Nor will sub-s. (6) apply if there is no such order, even where proceedings have been already commenced, but have been subsequently withdrawn on the tenant agreeing to vacate.

The tenant, however, is not entirely without a remedy in such a case, since he may be entitled to recover damages against the landlord for deceit: see *Derry* v. *Peek*, 14 A.C. 337.

In the second place, what would be the position of a landlord who really required the premises for his own occupation at the time he requested the tenant to vacate on that ground, but who, subsequently, owing to a change of circumstances, was unable to occupy the premises himself personally? Such a representation, it is submitted, would be of a continuing nature, and would enure until the date on which the tenant actually vacated, so that the landlord, it is submitted, might be liable to an action for deceit, if he failed to inform the tenant of the change of circumstances, and thus give him the option of continuing in possession or vacating, as he pleased.

On the other hand, if the landlord had an honest intention of occupying the premises himself, right down to the date on which the tenant vacated, but subsequently to that date was unable to do so by a change of circumstances, it is submitted that the position would be entirely different, and that he might with safety let the premises to another tenant without running any risk of being held liable in an action for damages for deceit, at the suit of his late tenant, to whom the representation had been made.

# POINTS IN PRACTICE.

**Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of paper only, and be in triplicate. Each copy to contain the name and address of the subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.**

LANDLORD AND TENANT—COST OF LEASE—COUNTERPART—REGISTRATION UNDER L.R.A., 1925.

891. *Q.* I am acting for the lessee in regard to a lease for a term exceeding forty years, which requires to be registered at the Land Registry under s. 123 of L.R.A., 1925. The lessee has paid the lessor the scale costs, as there was no agreement regarding these. The lessor now claims to be entitled to receive the costs of registering the counterpart lease at the Land Registry, including the Land Registry fees. I shall be glad to have your opinion as to whether the lessee is liable to pay these ?

*A.* Section 123 of the L.R.A., 1925, provides that the lease shall be avoided if unregistered, but the title of the lessor in no way depends on the counterpart, so it does not appear clear why it should be registered at all. Whether so or not, however, in the absence of agreement otherwise, the rule is that the landlord pays for his own counterpart, see *Jennings* v. *Major*, 1837, 8 C. & P. 61, and *Re Negus*, 1895, 1 Ch. 73, both quoted with approval in *Re Gray*, 1901, 1 Ch. 239 (C.A.), and the opinion here given that payment for the counterpart includes any necessary registration. On the above footing, the lessor's claim is not well founded.

EASEMENTS—REGISTRATION UNDER THE L.C.A., 1925.

892. *Q.* A is the owner of three houses, all adjoining. The drain connecting house No. 1, with the main sewer, runs at the back of houses 2 and 3 and along a passage at the side of house No. 3 to the main road, where it connects with the sewer. A sells house No. 1, and in the conveyance the right is expressly granted to the purchaser to use the drain. A had previously sold house No. 2, reserving to himself the right to use the drain, and A is still the owner of House No. 3. Having regard to the fact that the right is expressly mentioned in the conveyances to the purchasers of houses 1 and 2, is it necessary for the purchaser of house 1 to register the easement as a Class D (iii) charge or obligation, either as against the purchaser of house 2 or as against A, as the owner of house 3 ?

A is the owner of No. 4, High-street, and in the conveyance grants to the purchaser the right to draw water from a well on No. 5, High-street. A had previously sold No. 5, reserving to himself in the conveyance the right to use the said well. Is it necessary for the purchaser of No. 4 to register the easement as a Class D (iii) charge ?

*A.* The answer is in the negative in both cases. The easements mentioned are legal interests equivalent to an estate in fee simple in possession, and as such affect titles by their own inherent strength under the L.P.A., 1925, s. 1 (2) (*a*). An example of an equitable easement needing registration under the L.C.A., 1925, s. 10, Class D (iii) would be a right held for life.

PRE-1926 INTESTACY—INFANT HEIR AND WIDOW—ATTAINMENT OF MAJORITY—TITLE.

893. *Q.* A died in 1916 intestate leaving real estate. He left a widow, who took out letters of administration to his estate. He also left infant children. The oldest child, who is the heir at law, attained the age of twenty-one on the 13th May, 1927. It is now proposed to sell one house forming part of the intestate's estate, and as regards the remainder the heir at law wishes to give this to his mother. Can the widow sell the one house as the administratrix of her husband's estate ? If so, what should be done to enable her to hold the proceeds of sale for her own use ? What is the correct method of giving the remainder of the real estate to the widow ?

*A.* Having regard to the S.L.A., 1925, s. 1 (1) (ii) (*d*), (2), and (3), the real estate was settled land on 1st January, 1926, and was vested in the widow as trustee of the settlement, see s. 30 (3) and the 2nd Sched., para. 3 (1). By s. 3 (as amended, but not materially, by the L.P. (Am.) A., 1926) the land remained settled land only so long as the heir-at-law was an infant. This being so, the widow should convey the realty to her son in accordance with s. 7 (5). The title will then be in order, and the son can sell the house proposed to be sold with the concurrence of the doweress. He can also make the proposed gift.

SALE BY FIRST MORTGAGEE UNDER POWER—REGISTERED PUISNE MORTGAGE—CANCELLATION OF REGISTRATION—VENDOR'S OBLIGATION.

894. *Q.* A land charge in respect of a second mortgage of a small property has been registered in the Land Registry, under the L.C.A., 1925. The prior legal mortgagee having the deeds has contracted to sell the property under her power of sale, and the Purchaser's solicitors refuse to settle unless the registration of this second mortgage is "taken off the register." Is this necessary, and, if so, what is the procedure ?

*A.* The L.C.A., 1925, s. 22 (2), makes it clear that the registration of the puisne charge would neither affect a purchaser from the first mortgagee taking the benefit of the L.P.A., 1925, ss. 88 (1) (*b*) & 104, nor his assigns, and accordingly the opinion is here given that the vendor is no more obliged to spend money to clear away the possible claim of a puisne mortgagee than he would have been before the Act. But the purchaser, on showing that the charge is overreached may, possibly, have it cancelled at his own expense: see L.C.A., 1925, s. 19 (1) (*b*), and L.C. Rules, 1925, r. 10 and Form L.C. 8.

SETTLED LAND—TENANT FOR LIFE LEAVING AN INOPERATIVE WILL—SOLE EXECUTOR PRE-DECEASING HER—TITLE.

895. *Q.* By an indenture dated the 11th September, 1914, and made between A of the one part and B (the nephew of A) of the other part, A, in consideration of the natural love and affection which she had for B, and as settlor, conveyed to B certain cottages, to hold the same unto B to the use of A during her lifetime, and from and immediately after her decease to the use of B in fee simple, for his own benefit absolutely. The settlement contained a power of revocation which was never exercised. B died in April, 1924, leaving a widow and children, and A died in 1927. A had made a will leaving everything to B and appointing him sole executor, but as B had pre-deceased A, such will was of no effect. A left no estate whatever, and no one proposes to take out letters of administration to her estate. Did the settled property on A's death become vested in B's representatives, or is it necessary for a legal personal representative of A to be appointed to pass the legal estate to B's representatives, or, if no legal personal representative is appointed, for trustees to be appointed by the court for that purpose ? Prior to the Law of Property Acts the legal estate would apparently on A's death have passed to B's representatives without anything further being done. The decision of the Court of Appeal in *Re Ryder & Steadman's Contract*, 1927, W.N. 159, may have some bearing.

*A.* Since the power of revocation was never exercised, the premises in question were within the definitions of settled land, both of the S.L.A., 1882, and the S.L.A., 1925. The chief point of *Re Ryder & Steadman's Contract, supra*, therefore, does not arise. By virtue of the L.P.A., 1925, 1st Sched.,

Pt. II, paras. 3 and 6 (*c*) A took the legal estate in fee on 1st January, 1926, and, since she failed to make an effective appointment of an executor, the opinion is here given that on her death it vested in the Probate Judge, under s. 9 of the A.E.A., 1925 (see s. 55 (1) (vi), as to the meaning of the word "intestate," where a will has been left). This being so, it can only be divested from him by the appointment of a special administrator, and, although the will is inoperative, the full grant would have to be taken and would be "*cum testamento annexo*," see *Re Ford*, 1902, 1 Ch. 218, affirmed, 2 Ch. 605; *Re Mary Ley*, 1892, P. 7; and *Hanson* v. *Shepherd, Re Howell*, 1867, 17 L.T. 123. Since there were no trustees for the purposes of the S.L.A., 1925, within s. 30, the court might make a general grant to an administrator, including the settled land, or perhaps make the grant of the latter in favour of B's personal representatives. In either case the special representatives should deal with the land in accordance with s. 7 of the S.L.A., 1925.

LEASE SUBJECT TO MORTGAGE—SURRENDER AND NEW GRANT—MORTGAGEE'S SECURITY.

896. *Q.* Certain property in mortgage to clients of mine is held by the mortgagor for a term of seventy-five years from 1925. The opportunity now arises for the mortgagor to surrender the present lease and accept a new lease for ninety-nine years from 1925. It is suggested that to effectually protect the mortgagees the existing mortgage should be redeemed, the present lease then surrendered and when the contemplated new lease is granted to take a fresh mortgage. Your opinion is desired as to whether this course is essential or whether it would suffice to have a memorandum (endorsed on the mortgage and signed by all parties) that the original term had been surrendered and that the mortgage should be read and construed as if the lease mentioned therein were the new lease and the term thereunder were increased accordingly. What stamp duties would such memorandum attract?

*A.* The first course is no doubt that of maximum safety, but it involves trouble and expense, and if the mortgagees can be adequately safeguarded by a simpler plan, probably they would be willing to adopt it. The memorandum mentioned in the second scheme, however, would at least have to be under seal, otherwise it would not create a term in the new lease. Assuming that the old lease is in the possession of the mortgagees as such, they should stipulate that the lessee should instruct their, the mortgagees', solicitor, to accept delivery of the new lease on behalf of the lessee, and thereafter hold it on behalf of the mortgagee. The solicitor would then deliver up the old lease and the deed of surrender to the lessor, and, if he had the substituted mortgage already engrossed, could at once procure its execution by the mortgagor. If this could not be done, the mortgagor could undertake in writing to execute a fresh mortgage, and the registration of this undertaking against him as an "estate contract" under the L.C.A., 1925, s. 10 class C (iv) would protect the mortgagees against interim dealings. The opinion is here given that, *quâ* the stamp, the new mortgage would be a "substituted security" within the Stamp Act, 1891, 1st Sched., distinguishing *Mount Lyell Co.* v. *Commrs. of I. R.*, 1905, 1 K.B. 161, on the ground that here there was the same mortgagor in either case, and the money was secured on virtually the same property.

LAND SUBJECT TO JOINTURE—DEATH OF OWNER INTESTATE—ADMINISTRATOR'S POWERS—TITLE.

897. *Q.* A died in 1927, intestate leaving a widow and one brother him surviving, and it has been arranged for one of the big banks to take out letters of administration. The only realty is a freehold house, which is subject to a certain well-known family jointure rent-charge. Doubts have been expressed that, in spite of the L.P. (Amend.) A., 1926, this land is settled land, and a special grant limited to the settled land will have to be obtained. It is observed, however that s. 33 of the A.E.A., 1925, enacts that on the death of a person intestate his estate shall be held by his personal representatives as to the real estate upon trust for sale, and it seems to us that, by virtue of sub-s. 7 which is added to s. 1 of the S.L.A. by the Amendment Act, this will operate to remove the real estate of the intestate from the application of s. 1 (1) (v) of the S.L.A., 1925? Your opinion will be much appreciated.

*A.* It is agreed that s. 1 of the L.P. (Amend.) A., 1926, leaves land held in fee simple subject to a charge settled land within the S.L.A., 1925, s. 1 (1) (v). Application for representation should be made by the proposed general representative. The S.L.A. trustees will, no doubt, if approached, indicate their unwillingness to act and thus all difficulty avoided.

RENT ACTS—LANDLORD'S "POSSESSION"—RENT ACT, 1923 s. 2 (1) and (3).

898. *Q.* A is the owner of a freehold house, with a tenant, B, paying a rent of 9s. 3d. a week. In January, 1926, B vacates. A offers the property for sale, but not finding a purchaser, lets to another tenant, C, at the same rent. The time between B's vacation of the premises and C's commencement of tenancy is exactly two weeks, during which time A draws no rent, and does not actually occupy the premises, and during this fortnight the premises are sanitarily cleansed. In 1927 A sells the property to D as a decontrolled house, obtaining a profit above the actual value. Paragraph 2, sub-s. (1) of the Rent and Mortgage Interest Restrictions Act, 1923, says, "Where a landlord . . . comes into possession of the whole of the dwelling-house at any time after the passing of this Act . . . then after the date when the landlord . . . comes into possession . . . the Principal Act ceases to apply to the dwelling-house." Sub-section (3) of the same paragraph goes on to state, "For the purposes of this section 'possession' shall be construed as meaning 'actual possession' and a landlord shall not be deemed to have come into possession by reason only of change of tenancy made with his consent." The last sub-section appears to have given rise to a number of opinions, but the opinion is put forward "that even if there be an interval before the fresh tenancy commences during which the landlord is technically in possession, this is not to cause decontrol of the house." The case of *Dunbar* v. *Smith*, mentioned in the *Times Report* of 15th December, 1925, decided that where a fortnight's repairs had been executed by the landlord between tenancies the property became decontrolled. This was a Divisional Court judgment in respect of a flat, but it is thought that the principle may apply to "the whole of the dwelling-house." The questions submitted are—

(*a*) What is "actual possession"?

(*b*) Does it apply in this case?

(*c*) Is the property decontrolled?

*A. Dunbar* v. *Smith* is reported 1926, 1 K.B. 360. The present case seems to be an *à fortiori* one both on *Dunbar* v. *Smith* and *Jewish Maternity Home Trustees* v. *Garfinkle*, 1926, 95 L.J.K.B. 766, where rooms were redecorated by the landlord, see top of p. 768. The opinion here given on the facts, therefore, is that the property is decontrolled.

MORTGAGE—PAYMENT OFF BY THIRD PARTY BEFORE 1926—RIGHT TO A TRANSFER ON 31ST DECEMBER, 1925—PRESENT POSITION.

899. *Q.* By a mortgage dated 31st December, 1920, the trustees of a working men's club registered under the Friendly Societies Act mortgaged certain freehold and leasehold property to A. On the 30th November, 1925, at the request of the club, B paid off the amount then owing on the mortgage, but no transfer of the mortgage was then or has since been executed. The original mortgagee's solicitors merely gave a receipt for the money paid. It is now desired to have the mortgage transferred to B. The club trustees decline to be parties to the transfer. The transfer will thus be from the original mortgagee to B. How did the new L.P.A. affect the question? On 1st January, 1926, B was entitled to have the mortgage transferred to him. As regards the freehold portion

of the mortgaged property, did the term of 3,000 years vest in the original mortgagee or in B ? Also, is the new form of transfer of mortgage which merely transfers the benefit of the mortgage applicable, or should the transfer be in the form applicable before the 31st December, 1925 ?

*A.* The L.P.A., 1925, 1st Sched., Pt. II, para. 3, vests legal estates in those having the best equity to them (otherwise than as stated), but para. 3 must be read subject to para. 7, and, if anyone had agreed with a mortgagee to take a transfer before 1926, but the transfer had not been executed before 1st January of that year, para. 7 (*j*), read in connexion with the definition of " purchaser " in s. 205 (1) (xxi), would have prevented the mortgage vesting in the proposed transferee, even if the money had been paid. Here, however, the mortgagee may have been paid off " *in invitum*," and there does not appear to have been a contract with, but merely an equity against him. Accordingly the opinion is here given that para. 3 operated, and the usual terms in the mortgaged property were created by the 1st Sched., Pt. VII, para. 1, and Pt. VIII, para. 1, in the freeholds and leaseholds respectively, in B's favour. As a matter of safety, however, it will be best for B to take transfers from A of the terms, in case this opinion is wrong, and they vested in A, in any form now applicable.

It is, of course, assumed that the trustees had power to mortgage.

UNDIVIDED SHARES—BUILDING LEASE—POWERS OF CO-OWNERS.

900. *Q.* In 1923, freehold land was conveyed on sale to two persons in fee simple as tenants in common in equal shares, and one of the purchasers borrowed part of his share of the purchase money from his co-purchaser, to whom he mortgaged his moiety of the land in fee simple. The purchasers have appointed themselves trustees of the land in place of the Public Trustee, in whom it had vested under L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), and they are now about to grant a lease of part of the land for 999 years for building purposes. The lessee's solicitor contends that, as our clients " are granting the lease under the powers vested in them by statute," s. 44 of the S.L.A., 1925, applies, of which sub-s. (3) (iii) requires that " the rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed." He therefore asks that our clients' surveyor shall certify that the terms of the sub-section have been complied with. To this we have replied (1) that the land is not settled land, as our clients are beneficially entitled to the fee simple, and that the fact of their having, in addition to the rights and powers as absolute owners, also the enabling rights and powers of a tenant for life, does not place them under the restrictions to which a tenant for life is subjected by the Act; and (2) that sub-s. (3) applies to land " contracted to be leased in lots " only, and its object is to prevent too large a proportion of " the entire amount of rent " from being reserved out of any one lot; and therefore a transaction confined to the granting a single lease is not within the purview of the sub-section. Kindly state which contention is, in your opinion, correct ?

*A.* The contention of the advisers to the lessees is doubtless founded on the provisions of the L.P.A., 1925, s. 28 (1), and their point that statutory trustees for sale, in the absence of powers conferred by a trust instrument, have no further powers than those given by statute, appears to be sound. On the other hand, if the property is not being let in lots the S.L.A., 1925, s. 44 (3) (iii), is not applicable, for sub-s. (3) is governed by the opening words, referring to leases in lots. Since " convey " includes the grant of a lease in the L.P.A., 1925 (see s. 205 (1) (ii)) it is suggested that the two owners might grant the lease as trustees and confirm and direct as beneficial owners under s. 23, thus overriding the trust for sale so far as it limited their powers as trustees.

SETTLED LAND—UNDER PRE-1926 WILL—SALE—TITLE.

901. *Q.* An owner of leaseholds died in 1901 having by his will bequeathed all his property unto his trustees upon trust to permit A.D. to receive the income thereof during her life and after her death to pay the income to E.D. for her life and upon the decease of E.D. upon trust to sell. The will was duly proved by the two executors therein named. A.D. predeceased the testator. E.D. died in 1927. The two executors died before 1926 the last survivor having made a will appointing two executors who are still living. It is now desired to sell the leaseholds and a question has arisen as to how title can be made. It is suggested :—

(*a*) That the representatives of the last surviving executor can sell under the trust for sale and that no assent of any kind is necessary on the ground that the property had long before 1926 become vested in the executors as trustees for sale subject only to the life interests.

(*b*) That the will creates a settlement and that there must be a vesting deed although by whom and in what capacity this should be given is not stated.

(*c*) That the representatives of the last surviving executor can sell as personal representatives of the original testator although their duties as executors must have long since ceased.

What is the proper method to make a title ?

*A.* (*a*) No assent can be expressed with this view. The trust for sale was a future, and not an immediate binding one on 31st December, 1925: see L.P.A., 1925, s. 205 (1) (xxix), and S.L.A., 1925, s. 117 (1) (xxx), and did not operate to prevent the land being settled land within the S.L.A., 1925, s. 1 (7) added by the L.P. (Amend.) A. 1926.

(*b*) The will created a settlement within s. 1 (1) of the S.L.A. 1925, and, assuming that the estate of the testator who died in 1901 was fully administered by 1st January ,1926, the L.P.A., 1926, 1st Sched., paras. 3 and 6 (*c*) operated to vest the land on that day in E.D. as tenant for life. The trustees of the will would be trustees for the purposes of the S.L.A., 1925, see s. 30 (1) (iv), and so entitled to a grant as special representatives under the A.E.A., 1925, s. 22 (1) or the J.A., 1925, s. 162, according as E.D. died testate or intestate. On taking the grant they could sell either as special representatives, or, upon assent to themselves, as trustees for sale. It is not stated whether new trustees of the will of the testator were ever appointed. If not, the executors of the last executor, who was also trustee, could apply for the grant.

(*c*) Even *Tanqueray Willaume* v. *Landon*, 1882, 20 C.D. 465, would not justify this proposition, which could only be defended by giving an unlimited application of the A.E.A. 1925, s. 36 (6) to the executors of any person who had possessed any property, and who, as such executors, had not expressly conveyed the property to a purchaser or beneficiary. In *Q.* 858, p. 558, the question is discussed whether this provision applies to pre-1926 implied assents at all, but a purchaser could not certainly be advised to rely on it in this case.

SETTLED LAND—UNDER PRE-1926 WILL—SALE—TITLE.

902. *Q.* A, by his will, dated 1915, appointed two executors, B and C, and thereby devised all his real estate upon trust to allow his wife, D, to receive the rents during widowhood, and directed his executors, B and C, to sell and dispose of his real estate, and to stand possessed of the net proceeds, in trust for his wife during widowhood, and after her death, in trust for his children. A died in 1924, and his will was proved by B and C in 1924. The executors, B and C, have sold part of the real estate with the consent of the widow, D. Who are the parties to convey the property ?

*A.* The answer to this question will depend on whether A's estate was fully administered before 1st January, 1926, so that a court would have implied assent to the settled devise within *Wise* v. *Whitburn*, 1924, 1 Ch. 460. If so, the real estate on that day vested in D, as tenant for life, under the

L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and she must make title as tenant for life, B and C being the trustees for the purposes of the Act. If not, the executors are still able to make title under the S.L.A., 1925, 2nd Sched., para. 2 (5). But it must be noted that the executors must hold in the latter case *quâ* personal representatives and not *quâ* trustees, a distinction clearly brought out in such cases as *re Ponder*, 1921, 2 Ch. 59.

PARCELS—MISTAKE BY "*Falsa Demonstratio*" IN SUBJECT-MATTER OF TWO MORTGAGES—POSSESSION UNDER SUCH MISTAKE—RECTIFICATION—EFFECT.

903. *Q.* By two leases in 1899, two houses which, from the description in the leases and the plans thereon are found to be Nos. 3 and 4, S. St., but which in the leases, are called Nos. 11 and 12, S. St., were demised to W for terms of 999 years. In 1907 W mortgaged the property comprised in and expressed to be demised by the leases to X, by sub-demise. In 1918 X entered into possession (with the consent of the mortgagor's administratrix) of Nos. 11 and 12, S. St., thinking that these were the properties comprised in the mortgage. By two other leases in 1899, two houses, which from the description in the leases and the plans thereon, are found to be Nos. 11 and 12, S. Street., but which in the leases are called Nos. 3 and 4, S. Street, were also demised to W for terms of 999 years. In 1904 W mortgaged the property comprised in and expressed to be demised by (*inter alia*) the two leases to F by assignment. In 1917 F's personal representatives entered into possession of Nos. 3 and 4, thinking these were the properties comprised in F's mortgage. In 1926, X and F's representatives found that their respective leases and mortgages vested the wrong properties in them, and a deed of rectification was executed and an exchange of leases took place. By this deed F's representatives assigned unto X " all the interest of F's representatives in the leases expressed to demise Nos. 3 and 4 but in fact demising Nos. 11 and 12 " in consideration of an assignment in similar terms by X of the other leases. It is to be observed that X had no mortgage of the properties of which she took possession, and also that in the deed of rectification, only " the interest in the leases " of these houses is assigned to her. Can X, as mortgagee, now assign the full residues of the terms in Nos. 11 and 12 to a purchaser under s. 89 of the L.P. Act, 1925 ?

*A.* The course of events is, perhaps, not quite easy to follow, but it is gathered that, for their mutual convenience, the mortgagees, by the so-called deed of rectification, really perpetuated the original mistakes and elected each to retain the premises in which, under a mutually erroneous view, they were already in possession. This being so, the legal interest in the mortgage terms was exchanged by the rectification deed, and, assuming it was aptly drawn, and that it was made clear that the debts were also changed over, X stands possessed of the mortgage term on Nos. 11 and 12, and can deal with it under s. 89. If the amounts originally charged were unequal, nothing in this answer must be taken as an assent to the proposition that two mortgagees, without the concurrence of a mortgagor, can exchange their securities on his property, and so place a greater burden on one portion of it than he had originally done.

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SOLICITOR STRUCK OFF THE ROLL.

At a meeting of the committee constituted under the Solicitors Acts, 1888 and 1919, and consisting of Sir Roger Gregory (chairman), Mr. W. H. Foster, and Mr. L. W. N. Hickley, which was held on Tuesday, the 26th ult., at The Law Society's Hall, Chancery-lane, it was found that Walter George Spickernell of Tonypandy, Treherbert, Gilfach Goch, and Tonyrefail, in the county of Glamorgan, had been guilty of professional misconduct in converting the money of a client to his own use, and it was ordered that his name be struck off the Roll.

# Correspondence.

## Arrestment on the Dependence.

Sir,—I feel I must join issue with your correspondent Mr. Roscoe on some of the matters raised in his courteous and informative letter appearing in your issue of 6th August. Underlying his first paragraph is a mild suggestion of disapproval in discussing a matter which has been referred to a committee before the committee has sat to consider it. Now however improper it might be to do so under certain circumstances surely the present case must stand by itself. A proposal is made to alter what has come to be regarded as a fundamental principle of English Law, and is referred by the Lord Chancellor to a committee. The manner of alteration proposed is the adoption of a process existing in what is technically a foreign law, and as such quite unknown to the general body of practitioners. In these circumstances it is surely necessary and desirable that the subject should receive the widest possible discussion, so that if need be, representations may be made to the committee by those most nearly concerned —the profession generally. Furthermore, while law and procedure must always advance to meet the needs of all classes in the community, regard must be had to the community as a whole. Chambers of Commerce do undoubtedly represent an all-important class in the country, and great weight should be given to their proposals for legal change, but I am certain that Mr. Roscoe will agree with me when I say that it is the profession who must remain the watchdogs and guardians of legal procedure for the community as a whole.

It is true I did not have before me the memorandum and other documents prepared by the Chambers of Commerce when I wrote my article. But, if my memory serves me rightly, the terms of reference to the Committee are to consider whether it is expedient to adopt in England a system similar to that of arrestment on the dependence in Scottish law. Clearly then the change the Committee are asked to report on is not limited to foreigners as suggested by Mr. Roscoe. The process of arrestment on the dependence as known to Scots law, and as explained in my article is not limited to foreigners but applies to all goods within the jurisdiction whether belonging to a defendant national or foreigner. My remarks on arrestment *ad fundandam jurisdictionem* were made by way of explanation of the procedure enabling a Scots pursuer to make a foreigner, not otherwise subject to the jurisdiction, subject thereto. As Mr. Roscoe wants the procedure of arrestment in security confined to foreigners then, as I indicated something might be done by way of extension in proper cases of the procedure under Order XIV, requiring a defendant foreigner to find security for at least a substantial part of the sum in dispute as a condition of defending.

There is no doubt that the abolition of the old process of attachment in the Mayor's Court was as Mr. Roscoe suggests, largely political, and for the reasons stated. But if such a process (which was not confined to foreigners and was regarded so jealously by the High Court) was so eminently desirable it seems passing strange that steps were not taken to have it adopted in the High Court procedure at that time. So far as the arrest of the debtor's person in the earlier part of the nineteenth century is concerned as described by Mr. Roscoe, it should be remembered that the Scots process under discussion is in no way a development following upon the abolition of arrestment of the person in like cases. There still exists in theory at least a process in Scots' law whereby a creditor may apply to the judge for a *fugae* warrant where there is just reason to suspect that the debtor is *in meditatione fugae*. The debtor is thereupon arrested until he has found caution *judicio sisti*. These warrants were at one time in much use in the Border Counties, but appear now to be quite obsolete.

Despite Mr. Roscoe's observations I still think that my criticism of the case of *La Société du Gaz de Paris* is amply

justified. The fact that one of the real parties to the case was an association of English underwriters does not appear to be very material to the question in issue. Not a single fact material to the case was Scottish, and Scots law did not apply. Yet with these matters present an attempt was made to have the matter decided in the Scottish Courts, and the defendants were put to the trouble and expense of defending the action on technical grounds before defending in the courts of another country on the merits. The protection afforded by the plea in Scots law of *forum non conveniens* did not afford the defendants relief from considerable trouble extending over a year and extrajudicial costs.

In regard to the concluding paragraph of Mr. Roscoe's letter may I point out that in the countries he has quoted in support of his contentions the process of arrestment in security has been in existence for a long time, and practitioners reared in its atmosphere use it sparingly. Foreign traders have been accustomed to its operation just as they have long been accustomed to the English law which leaves their goods free of execution until judgment. Innovations in procedure are not generally well understood abroad, their effect and extent being often magnified. This it appears to me would be peculiarly so of any procedure which has for its avowed object the placing of a nexus on foreign property in this country under certain circumstances. On the other hand, I hesitate to pit my opinion on questions of foreign trade and commercial enterprise against that of the combined chambers of commerce. However that may be, with such a stalwart champion of Scots law as Mr. H. P. Macmillan, K.C., serving on the committee, the advantages of the procedure are not likely to be lost sight of.

8th August. YOUR CONTRIBUTOR.

# Obituary.

## SIR GEORGE LEWIS.

The death occurred on Monday afternoon with tragic suddenness of Sir George James Graham Lewis, Bart., head of the well-known firm of Messrs. Lewis & Lewis, solicitors, Ely-place, Holborn. Sir George, who it is believed had been suffering from overwork, was staying at Belmont Clinic, at Le Planches, above Montreux, for some little time. The only son of Sir George Henry Lewis, Bart., C.V.O., he was born on 12th September, 1868, went to Harrow in 1883, going up to Balliol College, Oxford, four years later. He was articled to his father and admitted in 1894, when he entered the offices of the firm in Ely-place, Holborn, where his father and his grandfather before him, had carried on for so long a practice unique in many respects.

Amongst the *causes célèbres* in which the firm were engaged might be mentioned the protracted libel suit of *Belt* v. *Lawes*, and the well-known baccarat case, in which they successfully acted for the defendants. It will be borne in mind that the late King, then Prince of Wales, was called as witness. In the Parnell Commission they acted for Mr. Parnell and the Irish Nationalist Party, the enquiry lasting fifteen months. They successfully defended Lady Colin Campbell and the co-respondents in the divorce suit brought against them, and one of the more recent cases of importance in which they acted was the action brought by Mr. Lloyd George which resulted in a complete retraction in open court against the then Chancellor of the Exchequer and a verdict of £1,000 damages with costs, against the defendants.

When the late Baronet appeared as a witness in the *Dennistoun Case*, Counsel referred to him as the greatest living expert on the practice of the divorce laws.

After his father's death early in 1911 Sir George carried on the practice, taking into partnership Mr. R. W. E. L. Poole, B.A., and they have fully maintained the traditions of the great firm.

Immaculate in dress, with a style peculiarly his own, he was always most courteous and precise and was a great lover of music.

Although the firm have been successfully engaged in a very large number of cases, many of them were prevented from coming into court by the skill and tact with which matters of extreme delicacy were handled.

Sir George married in 1896 Marie, the daughter of Emil Hirsch, of Mannheim, and he is succeeded by his only son, George James Ernest Lewis, who was born on the 25th February, 1910. The deceased Baronet leaves two daughters, one of whom is married to Mr. R. H. Jessel, son of Sir Charles Jessel, Bart., and grandson of Sir George Jessel, Master of the Rolls.

# Privy Council.

**Snia Viscosa Societa, etc. *v.* s.s. "Yuri Maru."**
**Canadian American Shipping Co. *v.* s.s. "Woron."**

Lords Merrivale, Haldane, Sumner, Shaw and Warrington.
5th July.

ADMIRALTY JURISDICTION—COLONIAL COURTS—WHETHER AFFECTED BY CHANGES IN ENGLISH JURISDICTION—COLONIAL COURTS OF ADMIRALTY ACT, 1890.

*The Colonial Courts of Admiralty Act*, 1890, *did not confer on Colonial Courts of Admiralty the same jurisdiction as from time to time existed in the High Court in England, but only such jurisdiction as existed in that court when the Act became law.*

These were two appeals from the Exchequer Court of Canada and raised an important point in regard to admiralty jurisdiction throughout the Empire. In each case the owners of the arrested ship moved to set aside the writ *in rem* and warrant of arrest for want of jurisdiction. These motions were respectively dismissed by Mr. Justice Martin in the District Court, but on appeal were allowed in the Exchequer Court of Canada. The question which was raised in both cases was whether irrespective of residence of the defendant or place of origin of the alleged cause of action a Court of Admiralty in the Dominion might by arrest of a vessel within its area be called upon to adjudicate upon all claims of plaintiffs suing under any charter-party made in respect of the vessel. Incidentally the further question arose whether throughout the Empire there was a like right of litigants in courts of admiralty jurisdiction of proceeding by process *in rem* in respect of like claims under like circumstances of absence of local residence of parties and non-existence of any cause of suit arising within the local jurisdiction. The claim of the appellants was that by virtue of the Colonial Courts of Admiralty Act, 1890, whatever jurisdiction in admiralty was from time to time exercisable in the High Court in England was exercisable in Canada in the Exchequer Court. The words for construction in the Act of 1890 were these: "The jurisdiction of a Colonial Court of Admiralty shall . . . be over the like places persons matters and things as the admiralty jurisdiction of the High Court of England, whether existing by virtue of any statute or otherwise." The appellants claimed that those words could only be understood as applying to conditions which were to come into being upon and after the passing of the Act. The respondents on the other hand contended that the jurisdiction defined by the section was sufficiently and indeed unmistakably described as the jurisdiction of the High Court in Admiralty "existing" at the point of time when the Act of 1890 became law.

Lord MERRIVALE, in delivering their lordships' judgment, said the Act of 1890 empowered the legislature in any of the Dominions to determine by its own statute what should be the

extent of the admiralty jurisdiction of the courts for which the local legislation provided. Yet if the contention of the appellants in his case was sound an Act of the Imperial Parliament purporting on the face of it to apply to England and the High Court has without any choice of the self-governing states in the Empire peremptorily enlarged the jurisdiction of their admiralty courts subject only to a power in them to limit such jurisdiction by a new local law. A construction of the statute of 1890 which would have the effect of introducing unasked changes in the jurisdiction of the Dominion Courts could not be adopted unless the words of the statute should be found to leave no alternative. Neither the early history of the overseas courts, the course of modern legislation, continuity of policy nor practical convenience appeared to their lordships to require that the jurisdiction defined in the Act should be declared to be that "from time to time existing" in the High Court in England. On the whole the true intent of the Act appeared to their lordships to have been to define as a maximum of jurisdictional authority for the courts to be set up thereunder the Admiralty jurisdiction of the High Court in England as it existed at the time when the Act passed. What should from time to time be added or excluded was left for independent legislative determination. The appeals therefore failed, and the costs of the respondents must be paid by the appellants.

Counsel: *Sir John Simon*, K.C., and *Wilfrid Barton*; *W. Martin Griffin*, of the Canadian Bar; *Porter*, K.C., and *W. Lennox McNair*; *Sir Leslie Scott*, K.C., and *Sir Robert Aske*.

Solicitors: *Stephenson, Harwood & Tatham*; *W. & W. Stocken*; *William A. Crump & Son*; *Botterell & Roche*.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

# Court of Appeal.

No. 1.

## James Durnford & Sons *v.* Great Western Railway.

24th June.

Contract—Agreement to Indemnify against "All Claims and Demands"—Claim by Indemnifier Himself—Whether Maintainable.

*The plaintiffs obtained from the defendants permission to place and use a gangway over part of the defendants' premises, but the plaintiffs covenanted "to indemnify the said company against all claims and demands or liability whatsoever, whether in respect of damage to person or property arising out of or in connexion with the existence or user of the said gangway." A lorry of the plaintiffs, while on the gangway, was injured through the alleged negligence of the defendants' servants. Upon the preliminary question whether the indemnity prevented the plaintiffs from bringing an action,*

*Held, that the contract to indemnify was in respect of claims by third parties, but did not preclude the bringing of an action by the indemnifiers themselves, the plaintiffs.*

[So held by Lord Hanworth, M.R., and Scrutton, L.J., Sargant, L.J., *dissenting*.]

Appeal from a decision of MacKinnon, J. reported 71 Sol. J. 520. The facts appear in the report of the case below and in the headnote. The court, by a majority, dismissed the appeal.

Lord Hanworth, M.R., said that the words used did not seem apt to bar a claim by the plaintiffs themselves. He could see that words might have been used to the effect that the user of the gangway should be entirely at the plaintiffs' risk and that the railway company should not be responsible in any way for the user. But, taking the clause as a whole, that did not seem to be the effect of the actual words used. It was curious that the words "from and against all claims," etc., were not used. Exactly what the clause might be construed to mean he hesitated to say, but he agreed with Mr. Justice MacKinnon that the words were not apt to defeat a claim by the plaintiffs themselves.

Scrutton, L.J., delivered judgment to the same effect.

Sargant, L.J., dissenting, said that a study of the circumstances indicated that the granting of the user of the gangway involved extra danger for the company, and it seemed to him that the company only granted permission to use the gangway on condition that the plaintiffs guaranteed them against any consequences which might arise from its overlapping the railway line. The defendants' contention was not that the plaintiffs had no claim but that they (the defendants) were indemnified so that they could recover from the plaintiffs anything which they were forced on the claim to pay to the plaintiffs. The judge below had dealt with the matter as if it were a question of the release of the plaintiffs' claim, whereas it was really a question of the defendants' counter-claim under the terms of the indemnity. The words used in the indemnity clause seemed to him (Sargant, L.J.) to be as wide as possible. There was no exception as to any claim by the plaintiffs themselves, and nothing to limit the liability to indemnify to the case of a claim by third parties.

Counsel: *Stewart Bevan*, K.C., *Wilfrid Lewis*, and *J. A. Stainton*, for the appellants; *Rayner Goddard*, K.C., and *E. H. C. Wethered*, for the respondents.

Solicitors: *A. G. Hubbard*; *Calder Woods & Sandiford*, for *Wansbroughs, Robinson, Tayler & Taylor*, Bristol.

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

# High Court—Chancery Division.

## *In re* Morgan; Brown *v.* Jones and Others.

Clauson, J. 24th May.

Trustee Beneficiary—Practice—Separately Represented by Counsel—Separate Sets of Costs.

*Where trustees are represented by the same firm of solicitors and one of them is interested in the trust fund beneficially, it is primâ facie the solicitors' duty to employ separate counsel to represent the independent trustee in order that the court may have the assistance of such separate counsel.*

In re Burton, 1901, W.N. 202, *followed*.

Gaunt *v.* Taylor, 1840, 2 Beav. 346, *distinguished*.

Summons to vary Taxing Master's certificate. The facts of this case were that the defendants, Jones and Price, were trustees of a settlement made in 1881, under which, in the events which happened, they became possessed of certain property upon trust, as one Mary Morgan should, by her will, appoint. The plaintiff, as administrator of the estate of the settlor, who died in 1885, took out an originating summons for the determination of the question whether the power of appointment had been effectually exercised by the will of Mary Morgan, who had died in 1918. The two trustees of the settlement were defendants, and Mr. Price, besides being one of the trustees, was also administrator and sole next-of-kin of the testatrix, and was interested in contending that the power had been effectually exercised. Owing to differences of opinion on questions relating to the trusts of the settlement the trustees, who had been in the habit of consulting separate solicitors, entered appearances to the summons through separate solicitors, and appeared at the hearing by separate counsel. The court made an order declaring that the power had not been effectually exercised, and that the settled property devolved as part of the estate of the settlor, and referred it to the Taxing Master to tax the costs of the plaintiff and of the defendant of the application, including in the costs of the defendants any charges and expenses properly incurred by them as trustees and not already paid or allowed beyond their costs of the application. Two sets of costs were left with the Taxing Master by the same firm of London agents acting for the two firms of country solicitors whom Jones and Price had respectively been in the habit of consulting. One

of these lists included items relating to the costs of the summons, and the other contained the costs of Mr. Price on the summons. The Taxing Master rejected the whole of the defendant Price's bill, and Mr. Price objected that he was sued not only as trustee, but also as beneficiary, and the Taxing Master replied that he was unable to see any adverse interests between the two trustees to justify separate representation, and the defendant Price took out this summons to vary the Taxing Master's certificate.

CLAUSON, J., after stating the facts, said: The theory upon which Mr. Price bases his objection, namely, that a litigant may, so to speak, split himself so as to become entitled to separate bills of costs in respect of each of the capacities in which he appears in the case, is wrongly conceived. The Taxing Master's answer to Mr. Price's objections is that he can see no adverse interest between Mr. Price and his co-trustee which would justify the separate representation of Mr. Price. But in order to justify a trustee with a beneficial interest in being separately represented, it is not essential that his interest should be adverse to the interest of his co-trustee. To entitle him, in such a case, to sever from his co-trustee, it may be sufficient if he has a beneficial interest. Each case, however, must depend upon its particular circumstances. The practice laid down by Farwell, J., in *In re Burton*, 1901, W.N. 202, has been continuously acted upon by other judges. The principle is that where trustees are represented by the same solicitors, and one of them is interested in the trust fund beneficially, it is *primâ facie* the solicitors' duty to employ separate counsel to represent the independent trustee in order that the court may have the assistance of such separate counsel. It is stating the principle rather too narrowly to say, as Lord Langdale's judgment in *Gaunt* v. *Taylor*, 1840, 2 Beav. 346, seems to imply, that a trustee with a beneficial interest has a right to sever from his co-trustee only if that interest is conflicting. The fact of his beneficial interest would differentiate his position from that of the neutral trustee and would *primâ facie* be sufficient to justify representation by separate counsel. The matter will be referred back to the Taxing Master with the expression of the court's opinion that the costs of employing separate counsel ought to be allowed, but how far the costs incurred before instructions were given to counsel, on behalf of Mr. Price, should be allowed, will be left to the Taxing Master to decide.

COUNSEL: *W. G. Earengey, Jenkins*, K.C., and *Wright Taylor*.
SOLICITORS: *Shoubridge, Becher & Co.*, for *Hodgens, Cunliffe & Lemmon*, Abergavenny; *Peacock & Goddard*, for *Bevan, Hancock & Co.*, of Bristol.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

**Palmolive Company (of England) Limited *v.* Freedman.**
Astbury, J. 27th May.

RESTRAINT OF TRADE—AGREEMENT FOR PRICE MAINTENANCE—PROPRIETARY ARTICLE—"HOWSOEVER ACQUIRED"—VALIDITY.

*A price maintenance agreement whereby a seller, in consideration of his being placed on the wholesale list and allowed a wholesale discount, agreed not to sell a particular proprietary article, "howsoever acquired," under a certain fixed price, is not an agreement invalid in law, contrary to public policy, or so unreasonable as to be unenforceable.*

Dunlop Pneumatic Tyre Co. *v.* New Garage & Motor Company, 1915, A.C. 79, *considered*.

Dunlop Pneumatic Tyre Co. *v.* Selfridge & Co., 1913, W.N. 46, *applied*.

Action. This was an action for an injunction to restrain the defendant from selling a certain soap below a particular price. The facts were as follows: The plaintiffs were vendors of the Palmolive toilet soaps and other preparations which they purchased from the parent company in Canada, and the defendant carried on business as "The Economical Bazaars," having a wholesale warehouse and many branch shops at which he sold, among other things, the Palmolive soap. He was treated by the trade as a wholesaler. On 23rd August, 1926, the defendant signed the plaintiffs' price maintenance agreement under which, in consideration of his being placed on the wholesale list and allowed wholesale discount, he agreed, among other things, not to sell Palmolive soap, "howsoever acquired," to the public under sixpence a tablet, and obtained supplies on these terms. Later the defendant, finding that many shops were selling Palmolive soap under sixpence a tablet, followed their example and refused to be bound by his agreement, and obtained his soap from sources other than the plaintiffs; and the plaintiffs accordingly started this action for an injunction. The defendant contended that the agreement was in restraint of trade, contrary to public policy, and illegal, and that it imposed on him a restriction greater than was reasonably required for the plaintiffs' protection and was unreasonable in the public interest, and being non-severable was bad in *toto*, and even if severable the restriction as to soap "howsoever acquired" was invalid.

ASTBURY, J., after stating the facts, said: The only question is whether the agreement is enforceable. It is not suggested that if the restriction had been confined to soap purchased from the plaintiffs there would have been any objection thereto. But it is contended that the additional term "howsoever acquired" which I think is non-severable, raises an entirely different question. The defendant thought he might break his agreement because he was undersold. But if he and others adhered to their price maintenance agreements, it was a mere question of time how soon the scheme would be universally adopted, and the undercutters eliminated. The injury to the plaintiffs or the public is just the same wherever the goods are obtained. It is not the case of a general restraint of trade, but only a restriction in respect of a particular proprietary article which the defendant need not purchase or deal with at all. The plaintiffs have suggested analogies of wider restraints, e.g., tied-house cases which are admittedly valid. But I only propose to deal with reported cases where the question of source arose on the facts. In *Elliman, Sons and Company* v. *Carrington & Son*, 1901, 2 Ch. 275, the agreement was not confined to goods purchased from the plaintiffs, though the actual breach was in respect of such goods. The present point was not argued. But, Kekewich, J., held there was no restraint of trade, and gave damages for the breach. In *Dunlop Pneumatic Tyre Company* v. *Selfridge & Co.*, 1913, W.N. 46, Phillimore, J., held that a similar agreement was not in restraint of trade, and granted an injunction. His judgment was reversed by the Court of Appeal and the House of Lords on grounds not touching this point: see 1914, W.N. 59 and 1915, A.C. 847. In *Dunlop Pneumatic Tyre Company* v. *New Garage and Motor Company*, 1915, A.C. 79, Phillimore, J., granted an injunction in general terms, with an inquiry as to damages. The master assessed the damages at £5 a tyre, the sum mentioned in the agreement as liquidated damages for the breach, and this was the only point appealed on. The Court of Appeal held that the £5 was a penalty, and gave nominal damages. The House of Lords held that it was liquidated damages, and reversed the Court of Appeal. Now, although the present question was not argued, it is difficult to believe that the Court of Appeal and the House of Lords would have dealt with the agreement as they did if it was really invalid on the face of it. See *The North Western Salt Company* v. *The Electrolyte Alkali Company*, 1914, A.C. 461, as to the meaning of an agreement being to the detriment of the public: see *Attorney-General of the Commonwealth of Australia* v. *Adelaide Steamship Company*, 1913, A.C. 781. The defendant has failed to show that the agreement is invalid in law or inseverable, and there must be an injunction against its breach.

COUNSEL: *Jowitt*, K.C., and *Courtnay Terrell; Archer*, K.C., and *P. B. Morle*.
SOLICITORS: *Stock & Slater; Armitage & Craig*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

*In re* **Harrington Motor Co. Limited.**

Eve, J. 5th July.

COMPANY—WINDING UP—ASSETS AVAILABLE FOR GENERAL CREDITORS—DAMAGES FOR PERSONAL INJURIES—INSURANCE MONEY IN HANDS OF LIQUIDATOR—LEAVE TO LEVY EXECUTION.

*In an action against a motor company which was subsequently wound up, the plaintiff recovered damages for personal injuries. The damages were paid over by the insurance company in which the motor company was insured to the liquidator. The plaintiff by summons against the liquidator claimed that the damages were payable to him direct, and were not divisible among the general creditors of the company.*

*Held, that he was not so entitled.*

This was an adjourned summons taken out by Mr. Walter Chaplain, of Chelmsford, against the liquidator of the Harrington Motor Company. The applicant had prior to the winding up recovered £324 damages for personal injuries and costs in an action in the King's Bench Division, and he now asked by this summons for a declaration that that sum, together with the costs, did not form part of the assets of the company available for distribution among the general creditors in the winding up. The damages had been paid over to the liquidator by the insurance company in which the motor company was insured, and the applicant claimed that they were payable to him direct and were not available for general creditors. Counsel for the applicant relied upon *In re Richardson, ex parte St. Thomas's Hospital*, 1911, 2 K.B. 705, and *British Union and National Insurance Co.* v. *Rawson*, 1916, 2 Ch. 476, and also *ex parte James*, L.R. 9 Ch. 609. Counsel for the liquidator contended that the case came within *In re Law Guarantee Trust and Accident Society, Dodson's Claim*, 1915, 1 Ch. 340, and *Anglo-Baltic and Mediterranean Bank* v. *Barber & Co.*, 1924, 2 K.B. 410.

EVE, J., in giving judgment, after stating the facts, said that the case had given rise to an interesting discussion, but in his opinion the questions involved were concluded by authority. All that *In re Richardson, ex parte St. Thomas's Hospital*, 1912, 2 K.B. 705, decided was that a trustee in bankruptcy who was under an obligation to account to a third party was in no better position than the original creditor. It was quite impossible in the present case to hold that an applicant with whom they all must sympathise, had any claim at law or in equity against the moneys in the hands of the liquidator. It was said on behalf of the applicant that it was unfair or unrighteous that this money should be applied for the benefit of other persons, but the difficulty was that the law said that the assets of the company, unless subject to a legal or equitable lien, must be distributed among the general creditors; and it must be assumed that the legislature in so directing considered that less injustice would be done by a *pari passu* distribution than by giving preference to particular creditors; The question therefore was whether any special case had been made out for interfering with that distribution. He did not think there had been, and having arrived at that conclusion he would be acting contrary to it were he to say that the applicant should be at liberty to levy execution after the winding up, which might give him a preference to which he was not entitled. He therefore had no alternative but to dismiss the summons, but it was not a case for dismissal with costs, unless the liquidator pressed for them.

COUNSEL: *W. N. Stable; H. C. Bischoff.*

SOLICITORS: *W. Hilliard & Ward; Simmons & Simmons.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

**VALUATIONS FOR INSURANCE.**—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

# In Parliament.

## House of Lords.

### PROTECTION OF WILD BIRDS.

On Report of the Protection of Animals (Amendment) Bill, Lord STRACHIE moved an amendment to leave out "wild birds" from the provision which makes it a defence in proceedings that poison was placed for the necessary destruction of insects and certain other pests, and that all reasonable precautions were taken to prevent injury to dogs, cats, fowls or other domestic animals and wild birds. He asked how it was possible to prevent wild birds getting to land where poison had been laid.

Lord BLEDISLOE, Parliamentary Secretary to the Ministry of Agriculture, said that if this expression were omitted there would be a possibility of wild birds of great beauty and perhaps rarity being destroyed.

The EARL OF ONSLOW supported Lord Bledisloe, and Lord DARLING said the way in which it was proposed to prevent injury to birds was by dilution of the poison used.

The discussion concluded with a division, but the EARL OF DONOUGHMORE, on receiving the report of the tellers, said that as there were fewer than thirty peers present, he declared, acting under the Standing Orders, that the question was not decided, and that the debate was adjourned until the next sitting.

The Police (Appeals) Bill was read a third time.

The Feltwell Fuel Allotment Charity Scheme Confirmation Bill passed through Committee.

## House of Commons.

### GATES ON HIGHWAYS.

Mr. CRAWFURD (Walthamstow, W., U.) asked leave to introduce a Bill to provide for the alteration or removal of gates on highways. He said that the Bill was designed to mitigate the nuisance and to remove the danger caused by the existence of gates across highways used by traffic. The Bill gave a highway authority the power to require owners of such gates to provide them with the means of being held back when the traffic passed, and to require their total removal when dangerous and when on roads largely used by vehicular traffic. Safeguards were provided for those who owned grazing or other rights which the gates protected.

Leave was granted, and the Bill brought in and read a first time.

# Societies.

## The Manchester Law Society.

The annual meeting of this Society was held on the 26th ult. at The Law Library, Manchester, Mr. Adam Fox, the retiring president, being in the chair.

The report of the council for the past year showed a total membership of 401, and dealt with the work of the council in connexion with, amongst other matters, legal education, local land charges fees, the work of the Poor Persons' Committee, and the opinions of the council on various conveyancing questions submitted to them. The report referred to the generous bequest by the late Mr. Charlesworth of £500 for the purpose of applying the income thereof in or towards the payment of the fees for tuition or lectures at the school of law of the Manchester University of clerks articled to solicitors practising within twenty miles from the Manchester Royal Exchange. Reference was also made to the question of the amount of the fees charged for searches in the local land charges register, and that the matter had been taken up by The Law Society, and it was understood that a new Fees Order would shortly be issued. The report of the Poor Persons' Committee showed that 432 applicants had been supplied with application forms and that 223 applications had been received and dealt with, and that ninety solicitors were on the list as willing to give gratuitous service.

Mr. ADAM FOX, in his presidential address, stated that the extra powers given by modern statutes to Government Departments was observed with anxiety, and that if this undesirable practice were persisted in statutes would tend to become Acts of Parliament in name only. With regard to the Property Acts of 1925, he agreed that on the one hand many of the changes effected had been found to be beneficial, but on the other hand dealings, and particularly with settled land and joint holdings, had been rendered more difficult under the provisions of the Acts, and the necessity for searches imposed by the Acts had been the cause of delay and expense without

any apparent corresponding advantages, and he hoped that the authorities would act without delay in making provisions for the removal of the difficulties that had been disclosed.

In referring to the working of the Poor Persons' Rules, he considered that the procedure had been successful and had enabled many applicants to obtain much-needed relief which would have been beyond their reach without it, and he considered that thanks were due to those solicitors who had undertaken cases, but he hoped that more solicitors would be prepared to accept service under the Rules so that the burden might be so spread that it might not be found a heavy one. He referred also to the fact that experience of the past year had indicated that what the poor person required, in addition to the facilities afforded by the Poor Persons' Rules, was advice, not necessarily of a legal nature, to guide him in the difficulties which beset him, and that excellent work in this direction had been done by the Poor Man's Lawyer Association, but difficulty was experienced in obtaining a sufficient number of the profession to supply the requirements, and steps were being taken to obtain the assistance of more members of the profession, and particularly younger members, for carrying out this essential work. In concluding, the president observed as to the tendency for solicitors to join The Law Society earlier in their career than had hitherto obtained, and hoped that it would not be long before the Manchester Society had similar cause for gratification.

The following officers were elected: President, Mr. Peter John Skelton; Vice-President, Mr. James Arthur Grundy; Hon. Treasurer, Colonel A. F. Maclure; Hon. Secretary, Mr. K. H. Atkinson.

## The Law Society.

The following candidates (whose names are in alphabetical order) were successful at the Preliminary Examination held on the 6th and 7th July, 1927.

James Walter Akeroyd, Elliot Barnard Allard, Lydia Josephine Horton Baker, Richard Melville Beaumont, John Melliar Adams Beck, Henry Taylor Blakeston, Mervyn Anthony Britton, Edward Ridehalgh Carr, Bernard Alfred Catton, Alan Roy Cleaver, James Falshaw Cook, David Mendes Da Costa, Christopher D'Almada e Castro, Thomas Norman Elston, Walter Keith Forbes, George Gordon Fraser-Smith, John Gardner, Lewis Gassman, Geoffrey Edward Evans George, Henry John Gillman, Norman Howard Granville Glossop, Joseph Humber Glover, Jean Margaret Gordon, John Percival Gray, John Stephen Hart-Jackson, Thomas Ruthven Hepworth, Cuthbert Eric Herbert, Norman Howarth Hignett, Ernest Johnson, Ernest Edward Kemp, John Cyril Newport Kilner, Richard Martin Alford Kingswell, Gerald Thomas Lester, Ian Lisle MacGregor, Cyril John Bevan Manning, Harry Marks, Gerald Michael, John Joseph Neesham, John William Leslie Partridge, Gilbert Bickford Pearce, Guthrie Phillips, Kenneth Weber Relton, George Neville Riley, Miriam Rose, Edmund Whiting Roythorne, Fenwick Sanderson, Dennis Clitherow Smith, Lionel Howard Branson Stanley, Ronald Helme Sutcliffe, Guy Wilberforce Thompson, Francis James Trentham, Wilfred Joseph Walmsley, John Warhurst, Clifford Bertram Webb, John Lawrence Kidd Whitaker, William Allan Wignall, Harry McCheyne Wilkinson, Montague Gordon Williams, Vivian Jones Williams, Herbert Gerald Wiltshire.

No. of candidates, 94. Passed, 60.

# Legal Notes and News.

## Honours and Appointments.

Mr. Herbert William Prichard, K.C. (Procureur and Advocate-General, Mauritius), has been appointed a Puisne Judge of the Supreme Court of the Straits Settlements.

Mr. Edward William Hansell, Barrister-at-law, has been appointed an Official Referee of the High Court. Mr. Hansell—who has been Recorder of Maidstone for ten years—was called to the Bar in 1880.

## Professional Partnerships Dissolved.

John Friend Rowlatt, Thomas Arnold Kirkham, Richard Hodding Fox, Cecil Archdale Knight, Archibald Fenwick Pollard, and William Briggs Gill, solicitors, 38, Bedford-row, W.C., and 2, Millbank House, Westminster, S.W. (Torr and Co.), by mutual consent so far as concerns R. H. Fox, who has retired from the firm. J. F. Rowlatt, T. A. Kirkham, C. A. Knight, A. F. Pollard, and W. B. Gill will continue to carry on the practice under the style of Torr and Co.


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Ernest Gordon Learoyd and John Davidson Eaton Smith, solicitors, Huddersfield (Learoyd and Eaton Smith).

Arthur Edward Ward and Charles Martin Scott, solicitors, Exeter (A. E. Ward and Scott), as from 1st June. A. E. Ward will continue to practice at Exeter, and C. M. Scott at Dawlish, Devon.

Ernest Arthur Eaton Lowe and Frank Wilson, Birmingham (Burn, Lowe, Sons and Co.), by mutual consent as from 25th July. The practice will be carried on in future by F. Wilson under the same style.

## Resignations.

The resignation of Sir John Kotze, Judge of the Appellate Division of the Union of South Africa, has been announced in Pretoria.

## Wills and Bequests.

Mrs. Elizabeth Ann Foster, of Craigmere, Scalby, Yorks, wife of Mr. H. E. Foster, solicitor, left estate of the gross value of £5,058.

Mr. Robert Summers Smith, of Barmcluith, Maxwell Park, Glasgow, Writer, of West Regent Street, Glasgow, left personal estate in Great Britain of the gross value of £15,872.

Mr. Frederick Nelson Powell, solicitor (sixty-four), of New Lodge, Burry Port, Carmarthen, left estate of the gross value of £6,796.

Sir Francis Edwards, first Baronet, of Knighton, Radnor, retired solicitor, left estate of the gross value of £93,846.

Mr. James Wilson Neilson, solicitor, of Dundonald-road, Glasgow, and of West George-street, Glasgow, left estate of the gross value of £4,976.

Mr. Frank Anderson, solicitor, of Bailey's Hotel, Gloucester-road, South Kensington, S.W., and of Fenchurch-street, E.C., of the firm of Messrs. Tamplin, Taylor and Joseph, left estate of the gross value of £23,297.

Sir Walter Murton, C.B., of Gipp's-close, Langton, Kent, solicitor to the Board of Trade, 1875-1900, died on 20th June, aged ninety-one, leaving estate of the gross value of £29,721. He left the service of plate, presented to him by her late Majesty's Government, for services as a member of the London Conference on German Claims arising out of the South African War, to his son, Walter Herbert; £50 to James Dobson, gardener.

Mr. Wilfred Rayner (sixty-two) of Ashfield, Bayshill, Cheltenham, retired solicitor, left estate of the gross value of £17,208.

Mr. Robert William Gardiner, of Queen's Crescent, Edinburgh, of Messrs. Gardiner and Macfie, solicitors, left personal estate in Great Britain of the gross value of £12,795.

## AID FOR POOR LITIGANTS.

We understand that the Committee which was appointed in April, 1925, to inquire and report on the question of poor litigants has now completed its report. The terms of reference were :

" To inquire what facilities exist for giving to poor persons advice with respect to their legal rights and liabilities and aid in the conduct of legal proceedings, whether civil or criminal (other than such civil proceedings in the Supreme Court as fall within the scope of the existing Poor Persons' Rules), and to report what, if any, further steps should be taken in respect to these matter."

Majority and minority reports will be published. The majority report, it is gathered, after examining all the facts, expresses the opinion that the existing system, by which law societies and other bodies have co-operated to provide free advice to poor litigants, should be developed and extended, but is opposed to compulsion by legislation, as this would have the effect of compelling legal opinions and advice which are now given voluntarily.

The minority report, it is stated, advocates the setting up in municipal and county areas of a legal advice bureau, where legal advice can be given to poor persons on much the same lines as it is now given on questions of public health.

## STATUTE LAW REVISION.

The text is issued of the Lord Chancellor's Statute Law Revision Bill, the object of which is to enable the (Second) Revised Edition of the statutes to be brought down to a later date. In an accompanying memorandum, it is explained that the current edition of revised statutes consists of twenty volumes containing all Acts of Parliament passed before the end of the reign of Queen Victoria and still in force at the date when the volumes were produced. It is proposed to bring the edition down to the end of the year 1920 ; opportunity thus occurs to omit from the revised statutes the temporary legislation of the war period which has expired, but has not yet been repealed. The bill formally repeals enactments of the period 1900-1920 which have ceased to be living law, and authorises their omission from future volumes of revised statutes. It is estimated that the twenty volumes which contain the Acts passed from 1900 to 1920 will be represented by not more than three volumes of revised statutes. The bill follows the precedent of the last Statute Law Revision Act which was passed in 1908, and it repeats the elaborate and extensive safeguards which such Acts have always contained since the first of them was passed in 1863.

## THE REGISTRATION OF ARCHITECTS.

The registration committee of the Royal Institute of British Architects intend to prepare another Architects' Registration Bill for introduction during the next Session of Parliament, and they anticipate that it will not meet with serious opposition. They are encouraged in this view by the special report of the Select Committee to whom their last Bill was referred, in which the hope was expressed that an early opportunity would be given to the House of Commons next Session of considering a measure framed on the lines of the Bill as amended by the Committee.

The new measure, it was stated recently, will be on these lines. Its main purpose will be to set up a board of architectural education and to secure for those who take advantage of the system of training and examination which is to be provided the title of " registered architect." There would be no attempt to give a statutory meaning to the term " architect." This was sought in the last Bill, and met with strong objection, among those who opposed it being the Institution of Civil Engineers, local authorities, private firms, and co-operative societies. Major Harry Barnes, the chairman of the registration committee of the R.I.B.A., stated that this difficulty had now been overcome by the substitution of the term " registered architect," which left anyone free to use the term " architect." " Acting on the suggestion of the Select Committee," he added, " we hope to have an early opportunity of introducing a measure on the lines of the last Bill as amended, and we feel that there can now be no substantial opposition to it."

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

# Stock Exchange Prices of certain Trustee Securities.

**Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 25th August, 1927.**

| | Middle Price 10th Aug. | Interest Yield. | | | Yield with Redemption. | | |
|---|---|---|---|---|---|---|---|
| **English Government Securities.** | | £ | s. | d. | £ | s. | d. |
| Consols 4% 1957 or after | 84¾ | 4 | 14 | 6 | — | | |
| Consols 2½% | 54⅞ | 4 | 11 | 6 | — | | |
| War Loan 5% 1929-47 | 101¾ | 4 | 18 | 6 | 4 | 19 | 0 |
| War Loan 4½% 1925-45 | 97 | 4 | 13 | 6 | 4 | 17 | 0 |
| War Loan 4% (Tax free) 1929-42 | 101½ | 3 | 19 | 0 | 3 | 19 | 6 |
| Funding 4% Loan 1960-90 | 86 15/16 | 4 | 12 | 0 | 4 | 14 | 0 |
| Victory 4% Bonds (available for Estate Duty at par) Average life 35 years | 94 | 4 | 5 | 6 | 4 | 9 | 0 |
| Conversion 4½% Loan 1940-44 | 97½ | 4 | 12 | 0 | 4 | 15 | 6 |
| Conversion 3½% Loan 1961 | 76⅝ | 4 | 11 | 0 | — | | |
| Local Loans 3% Stock 1921 or after | 63 15/16 | 4 | 14 | 0 | — | | |
| Bank Stock | 255 | 4 | 14 | 0 | — | | |
| India 4½% 1950-55 | 93⅞ | 4 | 16 | 0 | 4 | 19 | 0 |
| India 3½% | 71¼ | 4 | 18 | 0 | — | | |
| India 3% | 61⅛ | 4 | 18 | 0 | — | | |
| Sudan 4½% 1939-73 | 92¾ | 4 | 17 | 0 | 4 | 18 | 0 |
| Sudan 4% 1974 | 84½ | 4 | 15 | 0 | 4 | 18 | 6 |
| Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years) | 80¾ | 3 | 14 | 0 | 4 | 12 | 6 |
| **Colonial Securities.** | | | | | | | |
| Canada 3% 1938 | 84½ | 3 | 11 | 6 | 4 | 18 | 0 |
| Cape of Good Hope 4% 1916-36 | 93½ | 4 | 5 | 6 | 5 | 0 | 0 |
| Cape of Good Hope 3½% 1929-49 | 80 | 4 | 8 | 6 | 5 | 0 | 6 |
| Commonwealth of Australia 5% 1945-75 | 97⅞ | 5 | 2 | 0 | 5 | 2 | 6 |
| Gold Coast 4½% 1956 | 93½ | 4 | 16 | 0 | 4 | 18 | 0 |
| Jamaica 4½% 1941-71 | 92½ | 4 | 17 | 6 | 4 | 19 | 0 |
| Natal 4% 1937 | 93¼ | 4 | 6 | 0 | 4 | 19 | 6 |
| New South Wales 4½% 1935-45 | 90⅜ | 5 | 0 | 0 | 5 | 8 | 0 |
| New South Wales 5% 1945-65 | 97⅜ | 5 | 2 | 0 | 5 | 4 | 0 |
| New Zealand 4½% 1945 | 95 | 4 | 15 | 0 | 4 | 18 | 0 |
| New Zealand 5% 1946 | 101⅞ | 4 | 18 | 0 | 4 | 18 | 6 |
| Queensland 5% 1940-60 | 98¾ | 5 | 2 | 0 | 5 | 3 | 6 |
| South Africa 5% 1945-75 | 102 | 4 | 18 | 0 | 4 | 18 | 6 |
| S. Australia 5% 1945-75 | 97¾ | 5 | 2 | 6 | 5 | 3 | 0 |
| Tasmania 5% 1945-75 | 99½ | 5 | 1 | 0 | 5 | 1 | 6 |
| Victoria 5% 1945-75 | 99¼ | 5 | 0 | 6 | 5 | 2 | 6 |
| W. Australia 5% 1945-75 | 97⅝ | 5 | 2 | 6 | 5 | 3 | 0 |
| **Corporation Stocks.** | | | | | | | |
| Birmingham 3% on or after 1947 or at option of Corpn. | 63 | 4 | 15 | 6 | — | | |
| Birmingham 5% 1946-56 | 103½ | 4 | 17 | 6 | 4 | 17 | 0 |
| Cardiff 5% 1945-65 | 102¼ | 4 | 18 | 0 | 4 | 18 | 6 |
| Croydon 3% 1940-60 | 69¼ | 4 | 7 | 6 | 5 | 0 | 0 |
| Hull 3½% 1925-55 | 77¾ | 4 | 10 | 0 | 5 | 0 | 0 |
| Liverpool 3½% on or after 1942 at option of Corpn. | 73 | 4 | 16 | 0 | — | | |
| Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. | 52½ | 4 | 15 | 0 | — | | |
| Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. | 62½ | 4 | 16 | 0 | — | | |
| Manchester 3% on or after 1941 | 62¾ | 4 | 15 | 6 | — | | |
| Metropolitan Water Board 3% 'A' 1963-2003 | 63 | 4 | 15 | 6 | 4 | 17 | 6 |
| Metropolitan Water Board 3% 'B' 1934-2003 | 63¾ | 4 | 14 | 0 | 4 | 16 | 0 |
| Middlesex C. C. 3½% 1927-47 | 82 | 4 | 5 | 6 | 4 | 17 | 0 |
| Newcastle 3½% irredeemable | 72 | 4 | 17 | 6 | — | | |
| Nottingham 3% irredeemable | 62¾ | 4 | 16 | 0 | — | | |
| Stockton 5% 1946-66 | 101 | 4 | 19 | 0 | 4 | 19 | 6 |
| Wolverhampton 5% 1946-56 | 102½ | 4 | 17 | 6 | 4 | 18 | 0 |
| **English Railway Prior Charges.** | | | | | | | |
| Gt. Western Rly. 4% Debenture | 79½ | 5 | 0 | 6 | — | | |
| Gt. Western Rly. 5% Rent Charge | 97¾ | 5 | 2 | 6 | — | | |
| Gt. Western Rly. 5% Preference | 94 | 5 | 6 | 0 | — | | |
| L. North Eastern Rly. 4% Debenture | 74½ | 5 | 7 | 6 | — | | |
| L. North Eastern Rly. 4% Guaranteed | 70¾ | 5 | 12 | 6 | — | | |
| L. North Eastern Rly. 4% 1st Preference | 63 | 6 | 6 | 6 | — | | |
| L. Mid. & Scot. Rly. 4% Debenture | 78½ | 5 | 2 | 0 | — | | |
| L. Mid. & Scot. Rly. 4% Guaranteed | 77 | 5 | 4 | 0 | — | | |
| L. Mid. & Scot. Rly. 4% Preference | 72½ | 5 | 11 | 0 | — | | |
| Southern Railway 4% Debenture | 77⅞ | 5 | 3 | 0 | — | | |
| Southern Railway 5% Guaranteed | 97 | 5 | 3 | 0 | — | | |
| Southern Railway 5% Preference | 90 | 5 | 11 | 0 | — | | |

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